

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

<p>STATE OF OKLAHOMA,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>TYSON FOODS, INC., et al.,</p> <p style="text-align: center;">Defendants</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. 05-CV-00329-GKF-SAJ</p>
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**STATE OF OKLAHOMA'S RESPONSE TO PETERSON FARMS, INC.'S
DECEMBER 21, 2007 REQUESTS FOR ADMISSIONS
AND INTERROGATORIES TO PLAINTIFFS [SIC]**

COMES NOW, the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, (hereinafter "the State") and hereby responds to Peterson Farms, Inc.'s Requests for Admissions and Interrogatories. The State reserves the right to supplement these responses.

GENERAL OBJECTIONS

1. The State objects to these discovery requests to the extent that they seek the admission or denial of matters and discovery of information that is protected by the attorney-client privilege, the work product doctrine, and / or to the extent that they require the State to admit or deny matters which are the subject of review by expert consultants which have not yet been completed or by any other applicable privilege or protection under state or federal law.

2. The State objects to these discovery requests to the extent that they seek the discovery of information that is already in the possession of Peterson Farms, is obtainable from

another source that is more convenient, less burdensome or less expensive, or is as accessible to Peterson Farms as it is to the State. As such, the burden of obtaining such sought-after information is substantially the same, or less, for the Defendant Peterson as it is for the State.

3. The State objects to these discovery requests to the extent that they are overly broad, oppressive, unduly burdensome and expensive to answer. Providing answers to such discovery requests would needlessly and improperly burden the State.

4. The State objects to these discovery requests to the extent that they improperly seek identification of "all" documents for each request. Such discovery requests are thus overly broad and unduly burdensome. It may be impossible to locate "all" documents or each item of responsive information to such discovery requests.

5. The State objects to the extent that discovery sought is unreasonably cumulative or duplicative.

6. The State objects to these discovery requests and requests for admission to the extent that they do not state with the required degree of specificity and particularity what information is being sought to be admitted or denied. As such, such discovery requests are vague, indefinite, ambiguous and not susceptible to easily discernible meaning, requiring the State to guess as to what it is admitting or denying, or to admit or deny a statement readily susceptible to alternative interpretations.

7. The State objects to these discovery requests to the extent that the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, and the importance of the proposed discovery in resolving the issues.

8. The State objects to these discovery requests to the extent that they improperly

attempt to impose obligations on the State other than those imposed by the Federal Rules of Civil Procedure.

9. The State objects to the instructions set forth in these discovery requests to the extent that they improperly expand or alter the obligations imposed by the Federal Rules of Civil Procedure. The State objects to the definitions of these discovery requests to the extent that they improperly attempt to alter the plain meaning of certain words.

10. By submitting these responses, the State does not acknowledge that the requested information is necessarily relevant or admissible. The State expressly reserves the right to object to further discovery into the subject matter of any information provided and to the introduction of such information into evidence.

11. The State objects to the definition of “You,” “your” or “yourself” to the extent that it is intended to mean anything other than the State of Oklahoma.

RESPONSE TO REQUESTS FOR ADMISSION

REQUEST NO. 1: Please admit that you do not possess direct evidence that the land application of Poultry Waste from any poultry growing operation under contract with Peterson Farms has caused the Fecal Bacteria contamination of any surface water located within the IRW.

RESPONSE TO REQUEST NO. 1:

The State incorporates its general objections. The State objects to this request for admission to the extent it seeks information protected by the attorney client privilege or work product protection. Further, the State objects to this request for admission to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The State objects to the term “direct evidence” as it is vague, indefinite,

ambiguous and not susceptible to easily discernable meaning, requiring the State to guess as to what it is admitting or denying, or to admit or deny a statement readily susceptible to alternative interpretation.

The State further objects to the term “direct evidence” because it improperly suggests that there exists only one type of relevant, probative evidence. Direct and circumstantial evidence are both admissible under the Federal Rules of Evidence, and one, either or both may be used to establish the liability of Defendant Peterson Farms, Inc. in a case such as this. The State will respond to this question by using the definition of “direct evidence” from Blacks Law Dictionary, 6th Edition, which states in part that “direct evidence” is “. . . [t]hat means of proof which tends to show the existence of a fact in question, without the intervention of the proof of any other fact . . .”

Subject to and without waiver of any objection, the State admits that it does not possess an individual piece of direct evidence that proves all the factual predicates of this request “without the intervention of the proof of any other facts.” The State denies this request to the extent that it asks whether the State possesses direct evidence of any of the facts described in the request. The State intends to prove that land application of Peterson Farms’ Poultry Waste has caused Fecal Bacterial contamination of surface water in the IRW through the use of direct and circumstantial evidence, as well as through expert opinion. Simply put, the State plainly does possess compelling, admissible evidence that will show that the land application of Poultry Waste from poultry growing operations under contract with Defendant Peterson Farms has caused Fecal Bacteria contamination of surface water in the IRW.

For example, the State has direct evidence of the land application of Poultry Waste from poultry growing operations under contract with Defendant Peterson Farms, including Peterson

Farms' admission of land application by its contract growers. *See* Response of Peterson Farms to Request to Admit No. 1, served by the State on April 20, 2007. The State also has direct evidence that Defendant Peterson Farms' Poultry Waste contains Fecal Bacteria. Additionally, the State has direct evidence that runoff from land upon which Defendant Peterson Farms' Poultry Waste was applied contained Fecal Bacteria. The State also has direct evidence that surface waters in the IRW are contaminated by Fecal Bacteria from Poultry Waste. Such direct evidence, along with circumstantial evidence and expert opinion, will show that land application of Defendant Peterson Farms' Poultry Waste has caused Fecal Bacteria contamination of surface water in the IRW.

REQUEST NO. 2: Please admit that you do not possess direct evidence that the land application of Poultry Waste from any poultry growing operation under contract with Peterson Farms has caused the Fecal Bacteria contamination of any groundwater located within the IRW.

RESPONSE TO REQUEST NO. 2:

The State incorporates its general objections. The State objects to this request for admission to the extent it seeks information protected by the attorney client privilege or work product protection. Further, the State objects to this request for admission to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The State objects to the term "direct evidence" as it is vague, indefinite, ambiguous and not susceptible to easily discernable meaning, requiring the State to guess as to what it is admitting or denying, or to admit or deny a statement readily susceptible to alternative interpretation.

The State further objects to the term “direct evidence” because it improperly suggests that there exists only one type of relevant, probative evidence. Direct and circumstantial evidence are both admissible under the Federal Rules of Evidence, and one, either or both may be used to establish the liability of Defendant Peterson Farms, Inc. in a case such as this. The State will respond to this question by using the definition of “direct evidence” from Blacks Law Dictionary, 6th Edition, which states in part that “direct evidence” is “. . . [t]hat means of proof which tends to show the existence of a fact in question, without the intervention of the proof of any other fact. . . .”

Subject to and without waiver of any objection, the State admits that it does not possess an individual piece of direct evidence that proves all the factual predicates of this request “without the intervention of the proof of any other facts.” The State denies this request to the extent that it asks whether the State possesses direct evidence of any of the facts described in the request. The State intends to prove that land application of Peterson Farm’s Poultry Waste has caused Fecal Bacterial contamination of groundwater in the IRW through the use of direct and circumstantial evidence, as well as through expert opinion. Simply put, the State plainly does possess compelling, admissible evidence that will show that the land application of Poultry Waste from poultry growing operations under contract with Defendant Peterson Farms has caused Fecal Bacteria contamination of groundwater in the IRW.

For example, the State has direct evidence of the land application of Poultry Waste from poultry growing operations under contract with Defendant Peterson Farms, including Peterson Farms’ admission of land application by its contract growers. See Response of Peterson Farms to Request to Admit No. 1, served by the State on April 20, 2007. The State also has direct evidence that Defendant Peterson Farms’ Poultry Waste contains Fecal Bacteria. Additionally,

the State has direct evidence that runoff from land upon which Defendant Peterson Farms' Poultry Waste was applied contained Fecal Bacteria. The State also has direct evidence that Fecal Bacteria from Poultry Waste has contaminated groundwater in the IRW. Such direct evidence, along with circumstantial evidence and expert opinion, will show that land application of Defendant Peterson Farms' Poultry Waste has caused Fecal Bacteria contamination of groundwater in the IRW.

RESPONSE TO INTERROGATORIES

INTERROGATORY NO. 1: If You responded to Request for Admission No. 1 with anything other than an unqualified admission, please fully describe your direct evidence, whether documentary or testimonial in nature. To be complete, for each location where you contend Fecal Bacteria contamination from Poultry Waste from any poultry growing operation under contract with Peterson Farms was identified, your answer should include but not necessarily be limited to: (a) identify the specific Source Location; (b) identify the date and location where you contend the Fecal Bacteria contamination was detected; (c) identify the species and concentration of the Fecal Bacteria; (d) identify the date(s) the Poultry Waste was applied to the Source Location; (e) fully describe the basis for your contention that the Fecal Bacteria contamination derived from the Poultry Waste application at the Source location; (f) for documentary evidence, identify each document you contend supports your assertion that the Fecal Bacteria contamination derived from Poultry Waste from a poultry growing operation under contract with Peterson Farms; (g) for testimonial evidence, identify each person who will testify in support of your assertion that the Fecal Bacteria contamination derived from Poultry Waste from a poultry growing operation under contract with Peterson Farms, and state the substance of each such person's expected testimony.

RESPONSE TO INTERROGATORY NO. 1:

The State incorporates its general objections and its response and objections to Request for Admission No. 1, Request for Admission No. 2, and Interrogatory No. 3 as if fully stated herein. The State objects to this interrogatory to the extent it seeks information protected by the attorney client privilege or work product protection. Further, the State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The State and its experts are still collecting and analyzing the information and data which will be used in their opinions and reports. Therefore, the State objects to any production of expert opinions and materials prior to the applicable dates set by the Court's Scheduling Order.

The State objects to the term “direct evidence” as it is vague, indefinite, ambiguous and not susceptible to easily discernable meaning. The State further objects to the term “direct evidence” because it improperly suggests that there exists only one type of relevant, probative evidence. Direct and circumstantial evidence are both admissible under the Federal Rules of Evidence, and one, either or both may be used to establish the liability of Defendant Peterson Farms, Inc. in a case such as this. The State will respond to this question by using the definition of “direct evidence” from Blacks Law Dictionary, 6th Edition, which states in part that “direct evidence” is “. . . [t]hat means of proof which tends to show the existence of a fact in question, without the intervention of the proof of any other fact . . .”

The State also objects to this interrogatory on the ground that it improperly seeks identification of all items of responsive information, which renders it overly broad, unduly burdensome and oppressive. It may be impossible to locate all items of information responsive

to this interrogatory. Additionally, the State objects to this interrogatory on the ground that it is improper, overbroad, unduly burdensome and premature. In essence, this interrogatory asks the State to set forth the *entirety* of its evidence supporting its contention. Discovery is still going on, and as such the State is still collecting and analyzing such evidence. Thus, the State is not in a position at this time to “fully describe” all of the evidence requested and it is a premature contention interrogatory. Moreover, even if it were presently in a position to do so, to request that the State in fact do so would be unduly burdensome and harassing. The presentation of the entirety of a party's proof is a matter for trial and is inappropriate for an interrogatory mid-way through the discovery period. As such, in responding to this interrogatory, and subject to and without waiving its objections, the State will be providing merely representative exemplar information. It should be understood by Peterson Farms that this information is merely representative and does not necessarily include every fact and item of evidence upon which the State will rely.

The State further objects to this interrogatory on the grounds that the injury from the Fecal Bacteria contamination is indivisible, and therefore, the State is not required to rely for evidence of its case on the respective contributions of each individual Poultry Integrator Defendant by quantifying such information.

Subject to and without waiver of any objection, the State identifies the following direct evidence, by way of example only, that in combination with circumstantial evidence and expert opinion will show that poultry growing operations under contract with Peterson Farms caused Fecal Bacteria contamination of surface water and groundwater in the IRW:

(a) Representative information regarding the Source Locations includes, without limitation, all poultry growing operations and land in the IRW upon which Poultry Waste from

Defendant Peterson Farms' poultry growing operations has been land applied. Representative information regarding contract growing operations and land application sites identified to date include, but are not limited to, the following: (1) The Oklahoma Department of Agriculture, Food and Forestry ("ODAFF") grower and applicator records (see Index of ODAFF files for Defendant Peterson Farm's contract growers by bates range, attached as Exhibit 1) and the AEMS Databases produced from ODAFF, (2) Peterson Farm's Discovery responses, (3) the Affidavit of Dr. J. Berton Fisher included in the State's Motion for Preliminary Injunction and associated reliance material (including, without limitation, the county tax records, investigative reports and aerial photographs from the State's Scientific Production), and (4) the Affidavit of Dr. Bernard Engel included in the State's Motion for Preliminary Injunction and associated reliance material. As an illustration only, the State identifies the following specific instance of the land application of poultry waste by a Peterson Farms contract grower: The Wayman Rhodes Farm, located at or near N36.20271 W.94.48698 (OK-PL-0012714 and OK-PL-0012715) was observed land applying poultry waste from the Wayman Rhodes Farm on open fields east and west of County Road 298. The Wayman Rhodes farm is 0.2 miles north of the poultry waste application.

(b) Representative information regarding the dates and locations where Fecal Bacteria contamination has been detected in the IRW to date includes, but is not limited to, the following data, reports and databases: (1) The State's Scientific Production, specifically all EML lab data in Index of State's Scientific production Exhibit 2 hereto. (2) United States Geological Survey ("USGS") data, an index of which is attached hereto as Exhibit 3, (3) Oklahoma Water Resources Board ("OWRB") Beneficial Use Monitoring Reports ("BUMP"), produced at the OWRB, and the OWRB Water Quality database produced at the OWRB, and (4) Oklahoma Department of Environmental Quality's ("ODEQ") BACTI database produced at ODEQ. As an

illustration only, the State identifies the following specific instance where Fecal Bacteria has been detected in the IRW: After observing the land application of Poultry Waste by the Wayman Rhodes farm (April 11, 2007) on the fields described above a rainfall event occurred. On April, 24, 2007, a sample of field water runoff (edge of field sample designated as EOF07-230-042407) was collected at N36.20373 W94.48687; and the edge of field sample was analyzed and found to contain Fecal Bacteria.

(c) Representative information regarding the species and concentration of Fecal Bacteria described in subsection (b) above includes, but is not limited to, the following data, reports and databases: (1) The State's Scientific Production, specifically all EML lab data, Exhibit 2 hereto, (2) USGS data, an index of which is attached hereto as Exhibit 3, (3) OWRB BUMP Reports and the OWRB Water Quality database, produced at the OWRB, and (4) ODEQ's BACTI database, produced at the ODEQ. As an illustration only, the State identifies the following species and concentrations of Fecal Bacteria in the IRW: An edge of field sample from the land application on the Wayman Rhodes Farm was analyzed for bacteria and the bacteria detected in this sample included Enterococcus group (>12,000 MPN/100ml), Total Coliform bacteria (>12,000 MPN/100ml), Fecal Coliform bacteria (12,000 MPN/100ml), and E.Coli (12,000 MPN/100ml). *See* STOK25408-25410.

(d) Representative information regarding the dates upon which Peterson Farms' poultry waste was applied to land includes, but is not limited to, the following: (1) The grower and applicator files of ODAFF (*See* Index of Peterson Farm's contract growers by bates range, attached as Exhibit 1), (2) the Affidavit of Dr. J. Berton Fisher attached to the State's Motion for Preliminary Injunction and associated reliance material (including, without limitation, the investigative reports and aerial photographs from the State's Scientific Production), (3) the

Affidavit of Dr. Bernard Engel included in the State's Motion for Preliminary Injunction and associated reliance material, and (4) Peterson Farm's Discovery responses. As an illustration only, the State identifies the following specific date of land application of Poultry Waste: The land application of Poultry Waste, from Wayman Rhodes Farms, was observed on April 11, 2007.

(e) The following is representative of information that supports the State's contention that the land application of Peterson Farms' Poultry Waste has caused Fecal Bacteria contamination of surface water and groundwater in the IRW. The State will show that Poultry Waste from poultry growing operations under contract with Peterson Farms is applied to land in the IRW and that Poultry Waste runs off and leaches into surface water and groundwater. The State will show that Poultry Waste contains Fecal Bacteria and that Poultry Waste is contaminating surface water and groundwater through evidence, analysis and expert opinion including, but not limited to, Principal Component Analysis and Polymerase Chain Reaction techniques. Additionally, the State incorporates its response to each of the other subsections of this response and to Interrogatory No. 3 as if fully stated herein.

(f) The State has identified, without limitation, the following representative documents that support the conclusion that Fecal Bacteria from Poultry Waste has caused contamination of surface water and groundwater in IRW:

1. All EML testing data. *See* Index of State's scientific production, Exhibit 2 hereto.
2. OWRB BUMP data and Water Quality database produced at the OWRB.
3. USGS sampling data. *See* Index attached hereto as Exhibit 3
4. ODEQ sampling data and BACTI database produced at the ODEQ.
5. Affidavits of Dr. Valerie J. Harwood, and all reliance materials.

6. Affidavit of Dr. Christopher Teaf, and all reliance materials.
7. Affidavit of Dr. Roger Olsen, and all reliance materials.
8. Affidavit of Dr. J. Berton Fisher, and all reliance materials.
9. Affidavit of Dr. Benard Engel, and all reliance materials.
10. All documents referenced in the State's response to Interrogatory No.3.

(g) The State may call the following expert witnesses to testify for the Preliminary Injunction in support of the conclusion that Fecal Bacteria from Peterson Farms' Poultry Waste caused contamination of surface water and groundwater in the IRW:

1. Dr. Valerie J. Harwood. *See* Affidavit supporting Motion for Preliminary Injunction and reliance materials for the substance of the testimony.

2. Dr. J. Berton Fisher. *See* Affidavit supporting Motion for Preliminary Injunction and reliance materials for the substance of the testimony.

3. Dr. Roger Olsen. *See* Affidavit supporting Motion for Preliminary Injunction and reliance materials for the substance of the testimony.

4. Dr. Christopher Teaf. *See* Affidavit supporting Motion for Preliminary Injunction and reliance materials for the substance of the testimony.

5. Dr. Bernard Engel. *See* Affidavit supporting Motion for Preliminary Injunction and reliance materials for the substance of the testimony.

The State will disclose all other expert and fact witnesses for the Preliminary Injunction in accordance with the Court's Scheduling Order. The State will disclose all expert and fact witnesses for the case in chief in accordance with the Court's Scheduling Order.

The State hereby incorporates its objections and responses to Interrogatory No. 3 as if fully stated herein. The State further reserves the right to supplement its response to this Interrogatory.

INTERROGATORY NO. 2: If you responded to Request for Admission No. 2 with anything other than an unqualified admission, please fully describe your direct evidence whether documentary or testimonial in nature. To be complete, for each location where you contend Fecal Bacteria contamination from Poultry Waste from any poultry growing operation under contract with Peterson Farms was identified, your answer should include but not necessarily be limited to: (a) identify the specific Source Location; (b) identify the date and location where you contend the Fecal Bacteria contamination was detected; (c) identify the species and concentration of the Fecal Bacteria; (d) identify the date(s) the Poultry Waste was applied to the Source Location; (e) fully describe the basis for your contention that the Fecal Bacteria contamination derived from the Poultry Waste application at the Source location; (f) for documentary evidence, identify each document you contend supports your assertion that the Fecal Bacteria contamination derived from Poultry Waste from a poultry growing operation under contract with Peterson Farms; (g) for testimonial evidence, identify each person who will testify in support of your assertion that the Fecal Bacteria contamination derived from Poultry Waste from a poultry growing operation under contract with Peterson Farms, and state the substance of each such person's expected testimony.

RESPONSE TO INTERROGATORY NO. 2:

The State hereby incorporates its responses and objections to Request for Admission No. 1, Request for Admission No. 2, Interrogatory No. 1 and Interrogatory No. 3 as if fully stated herein and reserves the right to supplement its response to this Interrogatory.

INTERROGATORY NO. 3:

For each surface water or groundwater location within the IRW where you contend Fecal Bacteria has been identified that originated from Poultry Waste from a poultry growing operation under contract with Peterson Farms, please fully describe your evidence, whether documentary or testimonial in nature. To be complete, for each location where you contend Fecal Bacteria contamination from Poultry Waste from any poultry growing operation under contract with Peterson Farms was identified, your answer should include but not necessarily be limited to: (a) identify the specific Source Location; (b) identify the date and location where you contend the Fecal Bacteria contamination was detected; (c) identify the species and concentration of the Fecal Bacteria; (d) identify the date(s) the Poultry Waste was applied to the Source Location; (e) fully describe the basis for your contention that the Fecal Bacteria contamination derived from the Poultry Waste application at the Source location; (f) for documentary evidence, identify each document you contend supports your assertion that the Fecal Bacteria contamination derived from Poultry Waste from a poultry growing operation under contract with Peterson Farms; (g) for testimonial evidence, identify each person who will testify in support of your assertion that the Fecal Bacteria contamination derived from Poultry Waste from a poultry growing operation under contract with Peterson Farms, and state the substance of each such person's expected testimony.

RESPONSE TO INTERROGATORY NO. 3:

The State incorporates its general objections and its response to Request for Admission No. 1, Request for Admission No. 2, Interrogatory No. 1, and Interrogatory No. 2 as if fully stated herein. The State objects to this request to the extent it seeks information protected by the attorney client privilege or work product protection. Further, the State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or

pecially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports. Therefore, the State objects to any production of expert opinions and materials prior to the applicable dates set by the Court's Scheduling Order.

The State objects to the term “direct evidence” as it is vague, indefinite, ambiguous and not susceptible to easily discernable meaning. The State further objects to the term “direct evidence” because it improperly suggests that there exists only one type of relevant, probative evidence. Direct and circumstantial evidence are both admissible under the Federal Rules of Evidence, and one, either or both may be used to establish the liability of Defendant Peterson Farms, Inc. in a case such as this. The State will respond to this question by using the definition of “direct evidence” from Blacks Law Dictionary, 6th Edition, which states in part that “direct evidence” is “. . . [t]hat means of proof which tends to show the existence of a fact in question, without the intervention of the proof of any other fact . . .”

The State objects to this interrogatory on the ground that it improperly seeks identification of all items of responsive information, which renders it overly broad, unduly burdensome and oppressive. It may be impossible to locate all items of information responsive to this interrogatory. Additionally, the State objects to this interrogatory on the ground that it is improper, overbroad, unduly burdensome and premature. In essence, this interrogatory asks the State to set forth the *entirety* of its evidence supporting its contention. Discovery is still going on, and as such the State is still collecting and analyzing such evidence. Thus, the State is not in a position at this time to “fully describe” all of the evidence requested and objects to this interrogatory as it is a premature contention interrogatory. Moreover, even if it were presently in

a position to do so, to request that the State in fact do so would be unduly burdensome and harassing. The presentation of the entirety of a party's proof is a matter for trial and is inappropriate for an interrogatory mid-way through the discovery period. As such, in responding to this interrogatory, and subject to and without waiving its objections, the State will be providing merely representative exemplar information. It should be understood by Peterson Farms that this information is merely representative and does not necessarily include every fact and item of evidence upon which the State will rely.

The State further objects to this interrogatory on the grounds that the injury from the Fecal Bacteria contamination is indivisible, and therefore, the State is not required to rely for evidence of its case on the respective contributions of each individual poultry integrator defendant by quantifying such information.

Subject to and without waiver of any objection, the State identifies the following evidence, by way of example, that in combination with circumstantial evidence and expert opinion will show that poultry growing operations under contract with Peterson Farms has caused Fecal Bacteria contamination of surface water and groundwater in the IRW:

1. Representative information regarding the location of Peterson Farms' poultry growing operations is contained in ODAFF records, county tax records, investigative reports, and associated aerials, all of which are referenced or included in the reliance materials of Dr. J. Berton Fisher. Additional representative information regarding the location of Peterson Farms' poultry growing operations is contained in Peterson Farm's discovery responses. The State has evidence of the land application of Poultry Waste from poultry growing operations under contract with Peterson Farms for which Peterson Farms is legally responsible, including Peterson Farms' admission of land application by its contract growers. See Response of Peterson Farms

to Request to Admit No. 1, served by the State on April 20, 2007. Additionally, representative information in the ODAFF grower files, applicator files and AEMS database show that poultry growing operations under contract with Peterson Farms land apply Poultry Waste in the IRW for which Peterson Farms is legally responsible. The ODAFF grower files and applicator files also show the reported amount, date and location of the land application of poultry waste. (See Index of bates ranges showing ODAFF files for Peterson Farms poultry growers in the Oklahoma portion of the IRW attached as Exhibit 1). The State also identifies the following deposition testimony which shows that W.A. Saunders, a Peterson Farms contract grower, has land applied poultry litter. See Deposition of W.A. Saunders, page 192, lines 8-25. The State identifies the following soil and waste samples from Peterson contract growers for which Peterson Farms is legally responsible: Bates Range STOK 16532-16534, Soil Sampling Plans, Aerial Photos LAL7 Pigeon, STOK 16502-16505, Soil Sampling Plans, Aerial Photos LAL15 Saunders.

2. The State has evidence that the surface water and groundwater in the IRW have been contaminated with Fecal Bacteria from Poultry Waste. For example, the EML data, produced through the State's Scientific Production, show the contamination of the surface waters of the IRW from Fecal Bacteria. (See the Index of the State's Scientific Production, all EML data and analysis, in Index of State's scientific production, attached as Exhibit 2). The State also identifies the following representative documents:

1. Avery, L. M., Killham, K., and Jones, D. L. (2005), Survival of E. Coli O157:H7 in Organic Wastes Destined for Land Application. *Journal of Applied Microbiology* 98(4): 814-22. (see pages 814-815, 820-821).
2. Coyne, M. S. and Blevins, R. L. (1995), Fecal Bacteria in Surface Runoff from Poultry-Manured Fields. *Animal Waste and the Land-Water Interface*. Boca Raton, Lewis Publishers: 77-87. (see pages 77, 80, 82, 85-86).

3. Crane, S.R., Westerman, P.W., and Overcash, M. R. (1980), Dieoff of Fecal Indicator Organisms Following Land Application of Poultry Manure. *Journal of Environmental Quality*, 9: 531-537. (see pages 531, 537).
4. Davis, J. V. and Bell, R. W. (1998), Water-Quality Assessment of the Ozark Plateaus Study Unit, Arkansas, Kansas, Missouri, and Oklahoma; Nutrients, Bacteria, Organic Carbon, and Suspended Sediment in Surface Water, 1993-95. United States Geological Survey 98-4164. 63 p. (see pages 1, 5, 7, 10, 19, 37-38).
5. Davis, R. K., Hamilton, S., and Van Brahana, J. (2005), Escherichia Coli Survival in Mantled Karst Springs and Streams, Northwest Arkansas Ozarks, U.S.A. *Journal of the American Water Resources Association* 41(6): 1279-1287 (see pages 1279-1280, 1284-1286).
6. Mawdsley, J. L., Bardgett, R. D., Merry, R. J., Pain, B. F., and Theodorou, M. K. (1995), Pathogens in Livestock Waste, Their Potential for Movement through Soil and Environmental Pollution. *Applied Soil Ecology : A Section of Agriculture, Ecosystems & Environment* 2(1): 1-15. (see pages 1-12).
7. Schlottmann, A. L. 2000. Reconnaissance of the Hydrology, Water Quality, and Sources of Bacterial and Nutrient Contamination in the Ozark Plateaus Aquifer System and Cave Springs Branch of Honey Creek, Delaware County, Oklahoma, March 1999-March 2000. Water-Resources Investigations Report 00-4210, available at <http://pubs.usgs.gov/wri/wri004210/>
8. Office of the Secretary of Environment. Coordinated Watershed Restoration and Protection Strategy for Oklahoma's Impaired Scenic Rivers (per Senate Bill 972, 2nd Session of the 48th Legislature, 2002), issued in 2003, 2004, 2005, 2006, and 2007. The reports are located at <http://www.ose.state.ok.us/documents.html#972>.
9. Report: USGS Preliminary Analysis of Phosphorus Concentrations and Fecal-Indicator Bacteria Counts at Selected Sites in the Illinois River Basin in Oklahoma, 1997-2001. OSRC 2-13.
10. Oklahoma's Beneficial Use Monitoring Program – Final Report 1998 OSRC Log 2-15.
11. Oklahoma's Beneficial Use Monitoring Program – 1999 Final Report OSRC Log 2-16.
12. Oklahoma's Beneficial Use Monitoring Program raw data given at the OWRB document production and located in the sliding filing cabinets containing all associated reports.

13. Oklahoma's Beneficial Use Monitoring Program Water Quality Database produced at the OWRB.
14. Oklahoma Department of Environmental Quality (1998-2004), Water Quality Assessment Integrated Reports. <http://www.deq.state.ok.us>
15. USGS Surface Water Data for the Illinois River Basin, Water Quantity and Quality parameters located at:
http://ar.water.usgs.gov/sun/data-bin/get_data?control=multiple&group_nm=illinois
16. OWRB Water Quality Data Viewer, all stations in the Illinois River Watershed, including Lake Tenkiller, located at:
<http://www.owrb.ok.gov/maps/server/wims.php>
17. BACTI database produced from the Oklahoma Department of Environmental Quality.
18. 2003 Oklahoma Vital Statistics, produced from Oklahoma Department of Health on October 22, 2007.
19. 2004 Oklahoma Vital Statistics, produced from Oklahoma Department of Health on October 22, 2007.
20. 1998, 2000, 2001, Adair County Profile, produced from Oklahoma Department of Health on October 22, 2007.
21. 2002, 2003, 2004, 2005 Annual Summary of Infectious Diseases, produced from Oklahoma Department of Health on October 22, 2007.
22. Adair County Health Statistics, produced from Oklahoma Department of Health on October 22, 2007.
23. Cherokee County Health Statistics, produced from Oklahoma Department of Health on October 22, 2007.
24. Delaware County Health Statistics, produced from Oklahoma Department of Health on October 22, 2007.
25. Sequoyah County Health Statistics, produced from Oklahoma Department of Health on October 22, 2007.
26. Affidavits of Dr. Valerie J. Harwood, and all reliance materials.
27. Affidavit of Dr. Christopher Teaf, and all reliance materials.

28. Affidavit of Dr. Roger Olsen, and all reliance materials.
29. Affidavit of Dr. Robert Lawrence, and all reliance materials.
30. Affidavit of Dr. J. Berton Fisher, and all reliance materials.
31. Affidavit of Dr. Bernard Engel and all reliance materials.
32. USGS data attached hereto as Exhibit 3.

3. Additionally, the State intends in part to demonstrate contamination of surface water and groundwater of the IRW by Fecal Bacteria through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data collected by the State, the United States Geological Survey and the United States Army Corps of Engineers, and the State's consultants. The State intends to call expert witnesses at trial who will demonstrate that storage and land application of the Peterson Farms' wastes (*i.e.*, the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment, and rainfall: (1) washes off the constituents of these wastes and the land applied soils, and they together run off of the area that was land applied and flow into IRW surface waters, and (2) discharges, seeps and leaches from the land applied soils into groundwaters that flow into IRW surface waters. In particular, the State will demonstrate violations by, without limitation, the following:

- (A) Showing that the soils and karst geology that make up the IRW are particularly susceptible to surface water runoff, seepage and leaching into the groundwater. Additionally, the hydrogeological connection between and among the land surface, the groundwaters and the surface waters within the IRW will demonstrate the "pathway" to

and through surface and groundwater that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;

(B) Showing that a chemical "finger print" is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendants' waste, the soils on which those wastes are applied, the groundwater and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect runoff and groundwaters, and the sediments of Lake Tenkiller;

(C) Conducting Lake Tenkiller core analyses and comparing them with (i) other lakes and (ii) poultry and waste growth and production;

(D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing with poultry production and waste volume in the IRW;

(E) Demonstrating poultry waste indicator chemicals and substances at locations that are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;

(F) Demonstrating that the density of poultry operations directly influences the concentrations of bacteria in IRW streams and rivers and that the contributions of bacteria from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;

(G) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by other evidence.

The State has not completed its analysis of the effects of microbial pathogens in the Illinois River Watershed. The State is continuing to characterize the pollution of the Illinois River Watershed by Fecal Bacteria caused by the Poultry Integrator Defendants, including Peterson Farms and entities for which Peterson Farms is legally responsible. The State reserves the right to supplement its response to this Interrogatory.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January, 2008, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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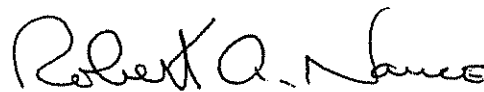
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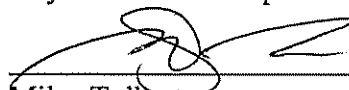
A handwritten signature in black ink that reads "Robert A. Nance". The signature is written in a cursive style with a horizontal line underneath the name.

Robert A. Nance

VERIFICATION

STATE OF OKLAHOMA)
) ss:
 COUNTY OF OKLAHOMA)

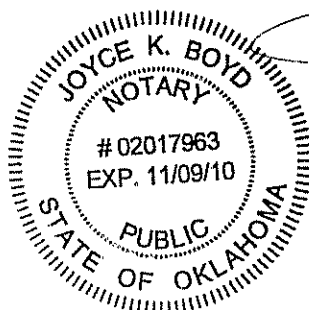
I, Miles Tolbert, being of legal age, state that I do not have personal knowledge of all facts recited in the foregoing answers to interrogatories, nor does any employee of the State of Oklahoma have personal knowledge of all the facts recited in the foregoing answers, but that the information has been gathered by representatives of the State of Oklahoma; that the responses are true and correct to the best of my knowledge and belief based on the information supplied by such representatives of the State of Oklahoma; that I am duly authorized to sign this verification on behalf of the State of Oklahoma; that I have read the answers to the foregoing Interrogatories and that said responses are true and correct to the best of my knowledge and belief, and that I have executed this Verification as my free and voluntary act and deed representing the same.

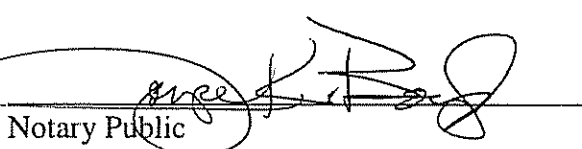


 Miles Tolbert
 Secretary of the Environment
 State of Oklahoma

Signed and subscribed to before me on this 22nd day of January, 2008

My Commission Expires:
11/09/10
 My Commission Number:
02017963





 Notary Public

00001

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA

3

4

W. A. DREW EDMONDSON, in his)
5 capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
6 OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
7 in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
8 FOR THE STATE OF OKLAHOMA,)

)
9 Plaintiff,)

)
10 vs.)4:05-CV-00329-TCK-SAJ

)
11 TYSON FOODS, INC., et al,)

)
12 Defendants.)

13 -----

14 THE VIDEOTAPED DEPOSITION OF
15 BERTON FISHER, PhD, produced as a witness on
16 behalf of the Defendants in the above styled and
17 numbered cause, taken on the 23rd day of January,
18 2008, in the City of Tulsa, County of Tulsa, State
19 of Oklahoma, before me, Lisa A. Steinmeyer, a
20 Certified Shorthand Reporter, duly certified under
21 and by virtue of the laws of the State of Oklahoma.

22

23

24

25

Exhibit 2

00266

1 Q What surface water?

2 A A drainageway that would lead to a bit larger
3 drainageways.

4 Q Well, where did -- did you in fact trace that

5 edge of field runoff into a recognized stream? 04:51PM

6 A That particular parcel of edge of field
7 runoff?

8 Q Yes, sir.

9 A No.

10 Q You would agree that just because water runs 04:51PM

11 off one field doesn't mean it makes it all the way

12 to a stream or tributary in the Illinois River

13 watershed; right?

14 A Well, I don't know how else water gets into

15 the Illinois River watershed or streams or 04:51PM

16 tributaries except by two mechanisms, runoff from

17 fields and other land surfaces and groundwater

18 supply.

19 Q How far was that field away from a recognized

20 tributary or stream? 04:51PM

21 MR. PAGE: Object to the form.

22 A I'd have to look at the map to answer that

23 question.

24 Q Let me ask a more basic question because

25 apparently my prior question wasn't very good. 04:51PM

00267

1 Isn't it possible, Dr. Fisher, that water can run

2 off of one field and end up slowing down and going

3 into the soil in the next field over?

4 A True, and it's possible it can then infiltrate

5 into groundwater. 04:52PM

6 Q It's possible. I'm not arguing that point.

7 I'm just saying just because it ran off the field,

8 doesn't mean it ran all the way to the Illinois

9 River. That was the point I was trying to get you

10 to agree to. 04:52PM

11 A Well, ultimately, unless the water is

12 evapo-transpired, it's going to get to the Illinois

13 River.

14 Q What if it's taken up by plants or it does

15 evaporate or it goes into a pond and the cattle 04:52PM

16 consume it?

17 A Well, the first two things, goes into plants

18 or is evaporated is called evapo-transpiration,

19 which I referred to.

20 Q All right.

21 A And there are mechanisms for water loss other

22 than runoff into the Illinois River and its

23 tributaries. Nonetheless, there are no other

24 mechanisms for water to reach the Illinois River and

25 its tributaries other than through runoff and the 04:52PM

00268

1 movement of ground water.

2 Q All right. Let's not debate that point.

3 The -- has the State to your knowledge done anything

4 to trace the bacteria in that edge of field runoff

5 to any waters of the state? 04:53PM

6 A I don't know.

7 Q And based upon your answer, that's the only

8 circumstance you can cite that is responsive to the

9 interrogatory I questioned you --

10 MR. PAGE: Object to the form. 04:53PM

11 A That's the only one I was aware of when that

12 question was posed to me.

13 Q Let me follow up on Mr. George's question.

14 Have you ever observed Peterson Farms, Incorporated

15 spreading poultry litter in the Illinois River 04:53PM

16 watershed?

17 A Personally? Any observation?

18 Q Have you observed it or received a report that

19 it has occurred?

20 A I have observed or we have had reports of 04:54PM

21 observations of waste from Peterson Farms growers

22 being spread in the Illinois River watershed. Those

23 reports include at least the report we just cited,

24 which is from an investigator, and in addition to

25 that, the Oklahoma Department of Agriculture, Food & 04:54PM

00001

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA

3
4 W. A. DREW EDMONDSON, in his)
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6 OF THE STATE OF OKLAHOMA and)
7 OKLAHOMA SECRETARY OF THE)
8 ENVIRONMENT C. MILES TOLBERT,)
9 in his capacity as the)
10 TRUSTEE FOR NATURAL RESOURCES)
11 FOR THE STATE OF OKLAHOMA,)

12)
13 Plaintiffs,)

14)
15 vs.)4:05-CV-00329-TCK-SAJ

16)
17 TYSON FOODS, INC., et al,)

18)
19 Defendants.)

20 -----

21

22 THE VIDEOTAPED DEPOSITION OF

23 VALERIE J. HARWOOD, Ph.D., produced as a witness

24 on behalf of the Defendants in the above styled and

25 numbered cause, taken on the 29th day of January,

in the City of Tulsa, County of Tulsa, State

of Oklahoma, before me, Bonnie Glidewell, a

Certified Shorthand Reporter, duly certified under

and by virtue of the laws of the State of Oklahoma.

26

27

28

29

Exhibit 3

00297

1 MR. JORGENSEN: Can we take a break before
2 the next one? I promise we'll end on time.

3 MR. PAGE: You can take all the breaks you
4 want, as long as we're finished at 4:30.

5 MR. JORGENSEN: All right, let's take a
6 break.

7 MR. WIETHOLTER: We are off the record; the
8 time is 3:56 p.m.

9 (Following a short recess at R 2:56
10 p.m., proceedings continued on the Record at 3:50
11 p.m.)

12 MR. WIETHOLTER: We are back on record.
13 The time is 3:50 p.m.

14

15 DIRECT EXAMINATION

16 BY MS. LONGWELL:

17 Q (By Ms. Longwell) Ms. Harwood, my name is
18 Nicole Longwell. I introduced myself earlier, and
19 I'm here on behalf of Peterson Farms. And I have
20 some questions to ask you and I'll kind of be 03:49PM
21 bouncing around because I'm following up on
22 Mr. Jorgenson and Mr. Elrod.

23 First I wanted to ask you a couple of
24 questions. In your analysis with the biomarker, are
25 you able to offer an opinion that the biomarker or 03:49PM

00298

1 biomarkers you found in the water bodies in the

2 Illinois River watershed can be linked back to any

3 particular poultry farm?

4 A No, they cannot be linked back to any

5 particular poultry farm. 03:49PM

6 Q So is it fair to say that you can't link any

7 of the biomarkers to the water bodies in any poultry

8 farm that contracts with Peterson Farms?

9 A They can't be linked since the biomarkers are

10 all the same in all of the facilities that we 03:49PM

11 tested, then they can't be linked back to any

12 specific one.

13 Q Okay. With regards to the cattle sample and

14 the testing for the biomarker in the cattle sample,

15 you indicated that you thought, it was your opinion, 03:50PM

16 that it was most likely from cross-contamination; is

17 that accurate?

18 A That's correct.

19 Q How can you be sure -- well I guess strike

20 that. With what degree of certainty can you say 03:50PM

21 that no other samples that were tested for the

22 biomarkers were contaminated or cross-contaminated?

23 A So the, like the field samples you mean? The

24 water samples?

25 Q The geese samples, the litter -- I mean the 03:50PM

00001

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2 NORTHERN DISTRICT OF OKLAHOMA

3

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6 OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
7 in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
8 FOR THE STATE OF OKLAHOMA,)

)
9 Plaintiff,)

)
10 vs.)4:05-CV-00329-TCK-SAJ

)
11 TYSON FOODS, INC., et al,)

)
12 Defendants.)

13 -----

14 THE VIDEOTAPED DEPOSITION OF
15 ROGER OLSEN, PhD, produced as a witness on behalf
16 of the Defendants in the above styled and numbered
17 cause, taken on the 2nd day of February, 2008, in
18 the City of Tulsa, County of Tulsa, State of
19 Oklahoma, before me, Lisa A. Steinmeyer, a Certified
20 Shorthand Reporter, duly certified under and by
21 virtue of the laws of the State of Oklahoma.

22

23

24

25

Exhibit 4

Olsen, PhD, Roger 2/2/2008

Page 1

00011

1 MR. GEORGE: Your objection is noted.

2 Q Dr. Olsen, can you identify a specific

3 location where poultry litter originating from a

4 farm under contract with one of my clients has been

5 identified and traced as the source of a specific 09:10AM

6 area of contamination in the streams, groundwater or

7 rivers in the Illinois River watershed?

8 MR. PAGE: Object to the form.

9 A Again, I believe you are a large source of

10 contamination. We've identified your contamination 09:10AM

11 in the environment. I could go back, I'm pretty

12 confident, and identify specific locations where you

13 are the major contributor. I have not done that to

14 date.

15 Q As we sit here today, sir, you cannot identify 09:10AM

16 for me a specific source -- I'm sorry, a specific

17 place of contamination in terms of stream water,

18 groundwater or river water which you can source to a

19 reasonable degree of scientific certainty to a

20 particular land application site involving poultry 09:10AM

21 litter originating under -- from a farm under

22 contract with one of my clients; is that correct?

23 MR. PAGE: Object to the form.

24 A If you give me a few minutes, I probably

25 could. At this very moment, which was your 09:10AM

00012

1 question, I cannot and I don't have that in mind,

2 but given a few minutes, I could definitely do that

3 to a reasonably degree of scientific certainty.

4 Q Dr. Olsen, if I asked you that same question

5 on behalf of the other individual named defendants 09:11AM

6 in this case, would your answer be the same?

7 A Yes.

8 Q Okay. Now, you said if given some time, that

9 you thought you could do that. Tell me how you

10 would go about doing that. 09:11AM

11 A Well, as you know, we have sampled over 500

12 locations in the streams, and those include the edge

13 of fields. Again, we have, as I understand it from

14 Dr. Fisher, definitive evidence of runoff from

15 fields where Tyson waste has been applied. We would 09:11AM

16 then look at where that water goes, and our sampling

17 points immediately downgradient of that, look for

18 the signature of chicken waste, particularly your

19 waste in that sample, see if there's any other

20 sources and be able to identify runoff from your 09:11AM

21 field into the surface water. Likewise, we have a

22 variety of geoprobes. We would look at -- if we

23 have any geoprobes downgradient from fields where

24 Tyson waste has been applied, we would look in those

25 geoprobes, and -- 09:12AM

00001

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA

3

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6 OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
7 in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
8 FOR THE STATE OF OKLAHOMA,)

)
9 Plaintiff,)

)
10 vs.)4:05-CV-00329-TCK-SAJ

)
11 TYSON FOODS, INC., et al,)

)
12 Defendants.)

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14 THE VIDEOTAPED DEPOSITION OF
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16 behalf of the Defendants in the above styled and
17 numbered cause, taken on the 31st day of January,
18 2008, in the City of Tulsa, County of Tulsa, State
19 of Oklahoma, before me, Lisa A. Steinmeyer, a
20 Certified Shorthand Reporter, duly certified under
21 and by virtue of the laws of the State of Oklahoma.

22

23

24

25

Exhibit 5

Teaf, PhD, Christopher 1/31/2008

Page 1

00247

1 external photographs of farms themselves and litter
2 being transported to fields and being disposed on
3 fields.

4 Q Okay. Have you -- did you receive, physically
5 receive these photographs in your possession? 04:19PM

6 A You know, I think I've seen them -- well,
7 largely the photographs I've seen have come from
8 Bert Fisher. I don't think I have copies of them,
9 but I've seen them in a PowerPoint presentation.

10 Q Okay. Have you personally observed litter 04:20PM
11 being applied to a field in the Illinois River
12 watershed?

13 A The one we were at visiting, I traveled
14 through the watershed for a day and a half or so,
15 and we saw a field in which it was being applied 04:20PM
16 from a distance.

17 Q Okay. Do you know whether or not that's one
18 of the fields that were sampled, that edge of field
19 sampling was done?

20 A I don't. I don't know that. 04:20PM

21 Q Okay. Can you directly associate any of the
22 indicator bacteria found in the waters of the
23 Illinois River watershed to any specific poultry
24 farm?

25 A I have not sought to do that. I don't know if 04:20PM

00248

1 anybody else has.

2 Q Okay. So is it fair to say that you cannot

3 directly associate any of the indicator bacteria

4 found in the waters of the Illinois River watershed

5 to any poultry farm which contracts with Peterson 04:21PM

6 Farms?

7 MR. PAGE: Object to the form.

8 A I haven't sought to do that, and I don't know

9 whether anybody else has.

10 MS. LONGWELL: Dr. Teaf, I have no further 04:21PM

11 questions for you. Thank you.

12 THE WITNESS: Nice to meet you.

13 MS. LONGWELL: Nice to meet you.

14 VIDEOGRAPHER: We're now off the Record.

15 The time is 4:20 p.m. 04:21PM

16 (Whereupon, a discussion was held off

17 the Record.)

18 VIDEOGRAPHER: We are back on the Record.

19 The time is 4:21 p.m.

20 DIRECT EXAMINATION

21 BY MR. JANTZEN:

22 Q Dr. Teaf, my name is Stephen Jantzen. I

23 represent the various Tyson entities in this

24 litigation, and I'm going to follow up on some

25 questions that have been asked of you today and 04:22PM

00001

1 IN THE DISTRICT COURT OF OKLAHOMA COUNTY

2 STATE OF OKLAHOMA

3

4 JOEL J. REED, RHONDA REED,)

JIM L. PIGEON, MICHELLE R.)

5 PIGEON, KENNETH GLENN,)

FRANKLIN GLENN, JULIE)

6 ANDERSON CHANCELLOR and)

BILL ANDERSON)

7)

Plaintiffs,)

8 vs.) Case No. CV-2005-8975

)

9 STATE OF OKLAHOMA, ex rel)

THE DEPARTMENT OF AGRICULTURE)

10 FOOD AND FORESTRY)

)

11)

Defendant.)

12

13 DEPOSITION OF TERRY PEACH

14 TAKEN ON BEHALF OF THE PLAINTIFFS

15 IN OKLAHOMA CITY, OKLAHOMA

16 ON APRIL 18, 2006

17

18

19 REPORTED BY: ANDREA J. GORMAN, CSR, RPR

20

21

22

23

24

25

Exhibit 6

Peach, Terry 4/18/2006

Page 1

00065

1 is a specific complaint, then as far as you know, the
2 growers are in compliance with your requirements, are
3 they not?

4 MR. WEITMAN: Object to the form.

5 A Restate the question in a clearer manner.

6 Q (By Mr. Williams) Unless you have
7 received a complaint about a grower, or unless you
8 have independent reason to believe there is
9 noncompliance and the grower has provided reporting
10 and sampling and analytical data demonstrating
11 compliance with their animal waste management plan of
12 the requirements of their permit, they're in
13 compliance at that point in time as far as the
14 Department is concerned, aren't they?

15 A Yes, they would be in compliance, yes.

16 Q Bear with me a moment, Secretary.

17 Secretary Peach, are you familiar with the
18 term agronomic rates?

19 A Just in a very general knowledge, not
20 enough to answer specific questions.

21 Q Who with the Department would be the
22 proper person to ask about agronomic rates, if not
23 you?

24 A Dan Parrish.

25 Q Dan is the go-to guy?

00001

1 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

2

STATE OF OKLAHOMA, ex rel.

3 W.A. DREW EDMONDSON, in his capacity as

ATTORNEY GENERAL OF THE STATE OF

4 OKLAHOMA, and OKLAHOMA SECRETARY

OF THE ENVIRONMENT C. MILES TOLBERT,

5 in his capacity as the TRUSTEE FOR NATURAL

RESOURCES FOR THE STATE OF OKLAHOMA,

6

Plaintiffs,

7

8 vs.

No. 05-CV-0329 GFK-SAJ

9

10 TYSON FOODS, INC., TYSON POULTRY, INC.,

11 TYSON CHICKEN, INC., COBB-VANTRESS, INC.,

AVIAGEN, INC., CAL-MAINE FOODS, INC.,

12 CAL-MAINE FARMS, INC., CARGILL, INC.,

CARGILL TURKEY PRODUCTION, LLC,

13 GEORGE'S, INC., GEORGE'S FARMS, INC.,

PETERSON FARMS, INC., SIMMONS FOODS, INC.,

14 and WILLOW BROOK FOODS, INC.,

15 Defendants.

16

17 VIDEO DEPOSITION OF DANIEL JOSEPH PARRISH

18 TAKEN ON BEHALF OF THE DEFENDANTS

19 ON JANUARY 14, 2008, BEGINNING AT 9:37 A.M.

20 IN OKLAHOMA CITY, OKLAHOMA

21

22

23

24 Videographer: Stephanie Britton

25 Reported by: Lana L. Phillips, CSR, RPR

Exhibit 7

00258

1 waste be disposed of in a permitted landfill,
2 rather than land-applied?

3 MR. GARREN: Object to form,
4 predicate, foundation.

5 THE WITNESS: I'm not aware of, only
6 because I've not had discussions with other state
7 regulatory people about that subject matter.

8 Q (BY MR. McDANIEL) Are you aware of
9 any poultry -- registered poultry feeding
10 operator in the Illinois River watershed who is
11 currently operating in violation of his or her
12 animal waste management plan?

13 MR. GARREN: Again, objection as to
14 form.

15 THE WITNESS: I can't answer that
16 question, because we don't have enough staff for
17 me to be able to answer that question -- that we
18 are doing constant inspections and testing all
19 that. I could not answer that question simply
20 because we do not have enough people or budget to
21 be able to determine an answer to that question.

22 Q (BY MR. McDANIEL) All right, sir.
23 And I've got to move to strike that answer.

24 The question was, sir, are you aware
25 of any poultry -- registered poultry feeding

00259

1 operator in the Illinois River watershed who is
2 currently operating in violation of his or her
3 animal waste management plan?

4 If you can answer it yes or no, I
5 request that you do so.

6 MR. GARREN: Same objection.

7 THE WITNESS: I cannot answer it yes
8 or no.

9 Q (BY MR. McDANIEL) You can't tell me
10 what you're aware of?

11 A I can't answer if anyone is in
12 violation of our laws and rules, because I'm not
13 out to every operation every day, nor is our
14 staff out to every operation every day.

15 There's not enough state troopers to
16 pick up everybody that's speeding on the roads.

17 Q I understand that point, sir, and
18 it's been made multiple times by you.

19 My question is: Are you aware of
20 any operator -- poultry operator in the watershed
21 that is currently in violation of their plan?

22 A I am not aware of any today. But
23 that answer can only be said by saying that we do
24 not have enough staff to be able to determine
25 that on a daily, hourly basis.

00001

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA

3

4 W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
5 OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
6 ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
7 TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

8)
Plaintiff,)

9)
vs.)No. 4:05-CV-00329-TCK-SAJ

10)
TYSON FOODS, INC., et al,)

11)
Defendants.)

12

13 -----

14

15 THE VIDEO DEPOSITION OF DAVID BERRY,

16 produced as a witness on behalf of the Defendants, in

17 the above styled and numbered cause, taken on the 29th

18 day of August, 2007, in the City of Tulsa, County of

19 Tulsa, State of Oklahoma, before me, Marlene Percefull,

20 Certified Shorthand Reporter, duly certified under and

21 by virtue of the laws of the State of Oklahoma.

22

23

24

25

Exhibit 8

Berry, David 08/29/2007

Page 1

00249

1 A I think it helps. 4:18PM

2 Q You think it helps. What's the purpose of an

3 Animal Waste Management Plan, if you know?

4 A They're required to get it and the purpose behind

5 it would be if I was -- would be just to tell them what 4:18PM

6 rate they can put their litter down at, you know.

7 Q It tells them what they can do with poultry

8 litter?

9 A Yeah. Tells them the types and soil and where

10 they can apply and where they can't apply. 4:19PM

11 Q And they're required to have one by the State of

12 Oklahoma?

13 A The poultry operations, yes.

14 Q Do you think the State of Oklahoma would require

15 them to have something that didn't do what it's 4:19PM

16 supposed to do?

17 MS. WEAVER: Object to form.

18 A No.

19 Q That wouldn't make any sense, would it?

20 A No, it wouldn't make no sense. 4:19PM

21 Q Do you think that the growers in the Illinois

22 River watershed are trying their best to comply with

23 what is required of them?

24 MS. WEAVER: Object to form.

25 A I think my growers are trying to comply with the 4:19PM

00250

1 law. 4:19PM

2 Q Okay. Do you know of any growers who have
3 contracts Tyson and/or Cobb that are intentionally
4 trying to violate the law?

5 A Not that I'm aware of. 4:20PM

6 Q Are you aware that growers, in fact, rely on those
7 Animal Waste Management Plans?

8 A That they rely on them?

9 Q Yeah.

10 A Yeah, they need them. 4:20PM

11 Q Do you, as an inspector for the State of Oklahoma
12 and Oklahoma Department of Ag Food and Forestry,
13 provide growers with the actual law?

14 A Not that I'm aware of.

15 Q Have you ever handed out a pamphlet? 4:20PM

16 A I have not.

17 Q What about at these educational courses?

18 A There's nothing handed out there.

19 Q Okay.

20 A I think O.S.U. has a website that you can go to 4:20PM

21 and we do, too, that I guess you can download it, if
22 you want to, you know, do that.

23 Q Do you all tell them about those websites?

24 A O.S.U. does at the classes.

25 Q Okay. So would you agree with me that primarily 4:21PM

00001

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA

2

3

W.A. DREW EDMONDSON, in his)
4 capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
5 OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
6 in his capacity as the TRUSTEE)
FOR NATURAL RESOURCES FOR THE)
7 STATE OF OKLAHOMA,)

8 Plaintiff,)

9 vs.)4:05-CV-00329-TCK-SAJ

10 TYSON FOODS, INC., et al.,)

11 Defendants.)

12

13

14 -----

15

16 VIDEO DEPOSITION OF JOHN LITTLEFIELD,

17 produced as a witness on behalf of the Defendants in

18 the above styled and numbered cause, taken on the

19 2nd day of August, 2007, in the City of Tulsa,

20 County of Tulsa, State of Oklahoma, before me, Karla

21 E. Barrow, a Certified Shorthand Reporter, duly

22 certified under and by virtue of the laws of the

23 State of Oklahoma.

24

25

Exhibit 9

Littlefield, John 8/2/2007

Page 1

00141

1 A Yes.

2 Q You have a question with regard to Diamond S?

3 A That's right.

4 Q All right. Can I see your copy of that? And

5 what I'm going to do is I'm going to draw a line

6 through these two names, you can still read them,

7 but I'm going to draw a line through them, and then

8 I'm going to put a question mark by Diamond S, and

9 tell me if by doing that, I've fairly represented

10 your testimony about that list?

11 A Yes.

12 Q Okay. Now, with regard to the ones that you

13 are aware are within your district, everyone except

14 Anita Andrews, Jeff Andrews, and I'm not going to

15 ask you about Diamond S Farms, everybody else on

16 that list, to your knowledge -- let's see, one, two,

17 three, four, five, six -- to your knowledge, have

18 any one of these Oklahoma poultry growers done

19 anything to cause the contamination of the waters of

20 the state of Oklahoma?

21 A Not to my knowledge.

22 Q Are you aware of any poultry grower under

23 contract with Peterson Farms, Inc. that has caused

24 the contamination of the waters of the state of

25 Oklahoma in the Illinois River watershed?

00142

1 A To what I know, no.

2 Q Any grower ever, to your knowledge under

3 contract with Peterson Farms, is your answer still

4 not to your knowledge?

5 A Yes, sir.

6 Q Okay. The complaint investigation part of

7 your job, we've talked about odor complaints. What

8 other types of complaints do you have to respond to,

9 just by category?

10 A Well, application rate, spreading too close to

11 swales or water, you know, contamination, that's

12 mentioned a lot, applying too close to waters of the

13 State, overapplying.

14 Q Every -- you talked about it this morning, so

15 I don't want to waste time going through it again,

16 but in order for you to act on a complaint, you have

17 to receive some directive from Oklahoma City; is

18 that true?

19 A That's right.

20 Q All right. So once -- are you given a

21 specific directive, please go look, see what you

22 find, in other words, you're told what is needed?

23 A There is a complaint -- the protocol is they

24 have a complaint form that's filled out.

25 Q Okay.

00001

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA

3

4

W. A. DREW EDMONDSON, in his)
5 capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
6 OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
7 in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
8 FOR THE STATE OF OKLAHOMA,)

)
9 Plaintiff,)

)
10 vs.)4:05-CV-00329-TCK-SAJ

)
11 TYSON FOODS, INC., et al,)

)
12 Defendants.)

13 -----

14 THE VIDEOTAPED DEPOSITION OF
15 GORDON JOHNSON, PhD, produced as a witness on
16 behalf of the Defendants in the above styled and
17 numbered cause, taken on the 4th day of February,
18 2008, in the City of Tulsa, County of Tulsa, State
19 of Oklahoma, before me, Lisa A. Steinmeyer, a
20 Certified Shorthand Reporter, duly certified under
21 and by virtue of the laws of the State of Oklahoma.

22

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24

25

Exhibit 10

Johnson, PhD, Gordon 2/4/2008

Page 1

00008

1 Q All right, and where did you retire from?

2 A I retired from Oklahoma State University.

3 Q And when did you retire?

4 A 2004 I believe. I've been retired four years.

5 Q All right. Dr. Johnson, when you appear 09:07AM

6 before the court in this matter, is it your

7 intention to testify under oath to the court that

8 the poultry farmers in the Illinois River watershed

9 are polluters?

10 A I will testify that the poultry industry has 09:07AM

11 mismanaged the waste generated and land applied it

12 in excess of agronomic benefit, and as has occurred,

13 there has been an increase in water soluble

14 phosphorus runoff that is common knowledge

15 associated with soil test phosphorus. 09:08AM

16 Q All right. My question to you, sir, was when

17 you appear before the court in this matter, is it

18 your intention to testify to the court that the

19 poultry farmers in the Illinois River watershed are

20 polluters, yes or no? 09:08AM

21 A I believe yes.

22 Q And your prior answer is going to be the basis

23 for why you are going to tell the court that these

24 poultry farmers are polluters?

25 A That will certainly be part of it. 09:08AM

**BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY DIVISION
STATE OF OKLAHOMA**

OKLAHOMA
DEPT. OF ENVIRONMENTAL QUALITY

JUN 24 2002

FILED BY: Sm
HEARING CLERK

IN THE MATTER OF WATER)
POLLUTION CONTROL FACILITIES:)

Oklahoma Tourism and)
Recreation Department,)
Respondent,)

Water Quality Division,)
Petitioner.)

Case No. 02-234

Lake Texoma Resort State Park)
Facility Nos. S-10849, T-10824, T-10825)
T-10827, T-10828, T-10936)
NPDES No. N/A)

Sequoyah State Park)
Facility Nos. S-21641, S-21642, T-21693,)
T-21694, T-21695, T-21696, T-21697)
NPDES No. N/A)

Tenkiller Lake State Park)
Facility No. S-21721)
NPDES No. N/A)

Problems: Discharge without a Permit)
Construction Violations)

ADMINISTRATIVE COMPLIANCE ORDER

The following Administrative Compliance Order is issued pursuant to the provisions of Title 27A O.S. §2-6-201 *et seq.*, §2-3-502, and Oklahoma Administrative Code (OAC) 252:004.

FINDINGS OF FACT

1. The Oklahoma Tourism and Recreation Department (OTRD) (Respondent), an Oklahoma State Agency, owns and operates a publicly owned wastewater treatment works

Exhibit 11

(POTW), which serves the employees and visitors of the Lake Texoma Resort State Park, Marshall County, Oklahoma. The Respondent owns and operates a POTW that serves the employees and visitors of the Sequoyah State Park, Cherokee County, Oklahoma. The Respondent owns and operates a POTW that serves the employees and visitors of the Pine Cove Marina area of Tenkiller Lake State Park, Sequoyah County, Oklahoma. The Respondent has not applied for and has not been issued an OPDES Permit to authorize discharge to waters of the state.

2. The Respondent has not been funded to complete the remaining tasks in the existing Memoranda of Agreement related to Lake Texoma Resort State Park, Sequoyah State Park and Tenkiller Lake State Park.

A. LAKE TEXOMA RESORT STATE PARK

3. On June 6, 1991, Respondent was issued Permit ST-91-016 to build and operate a wastewater land application, spray irrigation, system to enable the main wastewater treatment lagoons at Lake Texoma Resort State Park to remain total retention.

4. 27A O.S. §2-6-205(A) states that “it shall be unlawful for any facility, activity or entity regulated by the Department pursuant to the Oklahoma Pollutant Discharge Elimination System Act to discharge any pollutant into waters of the state or elsewhere without first obtaining a permit from the Executive Director.” On December 18, 2000, Blake Rudd, a representative of the Department of Environmental Quality (DEQ), inspected the wastewater treatment system serving the Lake Texoma Resort State Park Lodge. He observed that the final lagoon cell of the main lagoon complex was overflowing. He also observed that wastewater appeared to be seeping through the lagoon dikes. On January 5, 2001, Mr. Rudd reinspected the facility and observed that the final lagoon cell was still overflowing and wastewater was still seeping through the lagoon dikes. These incidents and conditions constitute unpermitted discharges.

5. OAC 252:656-11-4(b) and OAC 252:621-5-1(8) require an all-weather access road to serve wastewater treatment lagoons. On December 18, 2000, Mr. Rudd observed that the road to the lagoons needed gravel and grading. On January 5, 2001, Mr. Rudd reinspected the facility and observed that the road still did not meet the standards for all-weather access.

6. OAC 252:621-5-1(7) requires that trees, weeds, cattails, and all other obstructions must be removed whenever they appear on or around the dikes or in the lagoon itself in order that wind action be maintained for good treatment of sewage and for access to the facility. On December 18, 2000, Mr. Rudd observed that the dikes and area surrounding the lagoons was overgrown with vegetation. On January 5, 2001, Mr. Rudd reinspected the facility and observed that the dikes and area surrounding the lagoons were still overgrown with vegetation.

7. On February 27, 2001, DEQ sent a letter regarding the violations cited in Paragraphs Four (4) through Six (6) to the Respondent. A meeting between representatives of DEQ and the Respondent to discuss these violations was held at DEQ on February 28, 2001.

8. On August 5, 2001, the DEQ and the Respondent entered into Memorandum of Agreement (MOA), Case No. 01-169 to address the findings described above. A copy of the MOA is attached hereto and incorporated by reference. For the purposes of this Order, this MOA constitutes a Notice of Violation as required by 27A O.S. §2-3-502. MOA 01-169 required the following tasks to be completed according to the following schedule:

TASK	DATE
A. Remove excessive vegetation from the dikes of the existing wastewater treatment lagoons that serve the Lake Texoma Resort State Park.	July 1, 2001
B. Submit to DEQ an approvable Engineering Report as required by OAC 252:656-3-4.	December 1, 2001
C. Submit to DEQ approvable Plans and Specification (P&S) and an application for a construction permit, as required by OAC 252:656-3-5 and OAC 252:656-3-2.	March 1, 2002
D. Develop and submit an interim operation and maintenance plan which will be implemented as needed until the remedial construction work is completed.	March 1, 2002
E. Begin construction to upgrade the Lake Texoma Resort State Park wastewater treatment system in accordance with the approved construction permit.	October 1, 2002
F. Complete construction to upgrade the Lake Texoma Resort State Park wastewater treatment system in accordance with the approved construction permit. Submit to DEQ as-built P&S if the actual construction differs from that proposed in the P&S approved as part of Task C.	October 1, 2003

9. Respondent completed Task A in Paragraph Eight (8) on October 8, 2001, and Task D on May 7, 2002. Respondent submitted a draft of the Engineering Report required by Task B on January 29, 2002. On January 31, 2002, DEQ requested revisions to the Engineering Report. Respondent has not submitted a revised Engineering Report as of the date of this Order. As of the date of this Order, all other tasks listed in Paragraph Eight (8) remain uncompleted.

10. On October 10, 2001, Mike Madden of the DEQ, accompanied by Greg Snider, Manager of Lake Texoma Resort State Park, observed seepage from the base of the main lagoon dikes, which is an unpermitted discharge and in violation of 27A O.S. §2-6-205(A). The freeboard in the lagoons was less than 3 ft, as required by OAC 252:656-11-3(b)(4).

11. On May 6, 2002, Mike Madden and Robert Jemison, representatives of DEQ, accompanied by Kevin Eppler, Assistant Manager of Lake Texoma Resort State Park, observed that the final lagoon cell of the main lagoon complex was overflowing and that wastewater was seeping through the lagoon dikes at three locations. The newly updated wastewater land application system, as described in the Interim Plan submitted for Task D in Paragraph Eight (8) was not operating to prevent the lagoon from overflowing. Also on May 6, 2002, Mr. Madden and Mr. Jemison learned from Mr. Eppler that the lift station at the Catfish Bay Campground becomes inundated with water from Lake Texoma during conditions when the level of the lake is at flood stage. These incidents and conditions constitute unpermitted discharges and are in violation of 27A O.S. §2-6-205(A).

12. OAC 252:656-7-1(b)(1) requires pump stations to have at least two pumps. OAC 252:656-7-4(b) requires pumping stations to have an automatic alarm system capable of alerting responsible maintenance personnel of an equipment failure before an overflow occurs, even during a power failure. If telemetry is not provided to an office manned 24 hours per day, then an equivalent alerting capability must be shown. On May 6, 2002, Mike Madden and Robert Jemison, representatives of DEQ, accompanied by Kevin Eppler, Respondent's representative, observed that none of the pump stations, which are components of the Lake Texoma Resort State Park POTW, comply with the two-pump and/or alarm requirements.

13. OAC 252:710-3-33 requires total retention POTW systems serving populations less than 1,500 to employ a Class D wastewater works operator. OAC 252:710-3-34 requires that

owners of POTWs shall place the direct supervision of their wastewater treatment systems under the responsible charge of a properly certified wastewater works operator. During the May 6, 2002, inspection, the DEQ representatives learned that the Respondent does not employ, or have under contract, a properly certified wastewater works operator in responsible charge of the POTW that serves the Lake Texoma Resort State Park. Respondent was provided with a copy of the report of the May 6, 2002, inspection.

14. Failure by the Respondent to comply with the rules cited above may result in harm to the environment or to the health and well being of the affected public.

B. SEQUOYAH STATE PARK

15. The lagoons in the Sequoyah State Park POTW, operated by Respondent, are designed to be operated as a total retention lagoon system.

16. Carl D. Parrott, P.E., a DEQ representative, inspected and evaluated the Sequoyah State Park lagoon system on April 20, 1993. The inspection revealed that many of the lagoons serving the camping facilities were not protected from being inundated by lake waters during flood conditions. Further, seepage of water through the lagoon dikes was observed during the inspection. Such discharges are unpermitted and constitute a violations of 27A O.S. §2-6-205(A).

17. On May 25, 1993, DEQ sent a warning letter to the Respondent regarding the violations cited in Paragraph Sixteen (16).

18. On September 13, 1996, the Parties signed a Memorandum of Agreement, Case No. 96-030, to correct the violations cited in Paragraph Sixteen (16). DEQ had been provided with a proposed schedule for the MOA during a telephone conversation between Ed Morris, P.E., Chief Engineer, OTRD, and J.J. Johnson, P.E., DEQ. This schedule was incorporated in the MOA. On October 19, 1998, Paragraph Nine (9) of MOA, Case No. 96-030 was amended to extend the schedule agreed to by the Parties in the original MOA. For the purposes of this Order, this MOA constitutes a Notice of Violation as required by 27A O.S. §2-3-502.

19. OAC 252:656-9-1(b) requires structures of a treatment works, including electrical and mechanical equipment, must be protected from physical damage by a 100-year flood, and the treatment works should remain fully operational and accessible during a 25-year flood. An inspection by Phillis Stevens, District Representative, Water Quality Division, DEQ, and Tom

Dennis, R. S., Okmulgee DEQ, on November 30, 1999, indicates that some of the lagoon systems are built in flood plain so that lake water levels are sometimes higher than the tops of the dikes. During flooding, several of the lagoon systems are below high water elevations. The visual inspection revealed evidence of flooding, dikes overflowing, and washout. During flood conditions, water from Fort Gibson Reservoir inundates the lagoons, thereby causing wastewater to flow into the reservoir. These conditions and incidents constitute unpermitted discharges and constitute a violation of 27A O.S. §2-6-205(A).

20. OAC 252:656-11-2(c) requires that a minimum of two cells be provided for total retention lagoon systems. Several of the satellite lagoon systems were observed to be single-cell systems during the November 30, 1999, inspection.

21. During the November 30, 1999, inspection, DEQ representatives observed that the main lagoon system, which serves the lodge, seeps from two (2) of the three (3) lagoon cells. This seepage constitutes an unpermitted discharge and is a violation of 27A O.S. §2-6-205(A).

22. OAC 252:621-5-1(5) states “[a]ll lagoons and systems must be designed for a specific treatment purpose ... and shall be maintained and operated to provide optimum treatment results.” In addition, OAC 252:605-1-5(b)(3)(W) incorporates by reference 40 CFR 122.41(e) which states that “The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with this permit.” OAC 252:621-5-1(7) requires that trees, weeds, cattails, and all other obstructions must be removed whenever they appear on or around the dikes or in the lagoon itself in order that wind action be maintained for good treatment of sewage and for access to the facility. During the inspection on November 30, 1999, weeds, trees, and brush were observed growing in some of the wastewater lagoon dikes. There were also animal burrows in some of the dikes. Most of the lagoon cells, which were inspected on November 30, 1999, had a heavy accumulation of sludge, which was in need of removal. Pursuant to the requirements of OAC 252:648-3-5, a sludge management plan must be filed with the DEQ and must be approved prior to removing the sludge from the lagoon cells.

23. Evidence of discharges in the form of seepage from the cells and from dike overflows was observed during the November 30, 1999, inspection. These conditions and incidents constitute unpermitted discharges and constitute a violation of 27A O.S. §2-6-205(A).

24. On February 3, 2000 the DEQ and the Respondent entered into a Memorandum of Agreement, Case No. 99-423, to address the findings described in Paragraphs Sixteen (16) through Twenty-three (23). On July 25, 2001, the MOA was amended. A copy of the MOA and Amendment are attached hereto and incorporated by reference. For the purposes of this Order, this MOA constitutes a Notice of Violation as required by 27A O.S. §2-3-502. The MOA, Case No. 99-423, and Addendum, Case No. 99-423(A), required the following tasks to be completed according to the schedule indicated:

Task	Date
A. For non-sealed lift stations or lagoon cells, which are inundated and are a threat to discharge effluent into the lake, the facilities served will be closed until such time as the water recedes.	As Necessary
B. Retain a professional engineer licensed in the State of Oklahoma who is competent in wastewater design and project oversight, provided an appropriation for this is received in the 2000 legislative session.	December 1, 2000
C. Prepare and submit an approvable engineering report documenting the corrective action for the alleged violations cited in Paragraph Two (2) of the MOA.	March 1, 2002
D. Submit approvable plans and specifications for construction.	March 1, 2002
E. Obtain funding for the project.	July 1, 2002
F. Bid project and select contractor.	October 1, 2002
G. Start construction of necessary improvements.	November 1, 2002
H. Complete construction of improvements.	November 1, 2003

25. Tasks B and C in Paragraph Twenty-four (24) have been completed. As of the date of this Order, all other tasks listed in Paragraph Twenty-four (24) have not been completed.

26. The Engineering Report of Task C of Paragraph Twenty-four (24) documented that the POTW is capable of treating about 10% of the wastewater load. Park operations must be limited to restrict the generation of wastewater to the capability of the wastewater treatment system.

27. On February 28, 2001, a meeting between representatives of DEQ and the Respondent was held at DEQ. One of the topics of the meeting was the status of the Sequoyah State Park POTW.

28. Don Neal, representative of DEQ, inspected the Sequoyah State Park POTW on March 13, 2001, November 26, 2001, and May 14, 2002. These inspections showed that the violations cited in Paragraphs Sixteen (16) through Twenty-three (23) have not been corrected.

29. Failure of the Respondent to comply with the rules stated in Paragraphs Sixteen (16) through Twenty-three (23) results in harm to the environment or health and well being of the affected public. Among other problems, unpermitted discharge could contain pathogenic bacteria, which may cause the public, who swim or fish in the lake, to be exposed to an unsafe level of bacteria.

C. TENKILLER LAKE STATE PARK

30. The Tenkiller Lake State Park POTW, operated by the Respondent, is designed to be operated as a total retention lagoon system.

31. OAC 252:656-9-1(b) requires structures of a treatment works, including electrical and mechanical equipment, must be protected from physical damage by a 100-year flood, and the treatment works should remain fully operational and accessible during a 25-year flood. During an inspection by Robert Bates, R.S., on May 6, 1999, the holding tank located in the parking lot adjacent to the lake and containing raw sewage was under water due to high lake levels. The marina was prevented from pumping to the tank by the high water covering the parking lot. This, in turn, caused operational problems for the marina and posed a serious environmental threat from fecal contamination to the lake. During the inspection on July 22, 1999, it was noted that the holding tank does not have sealing lids to prevent cross contamination of wastewater and water from the lake and parking lot. During such conditions, sewage can be discharged to the waters of the State without a permit. These conditions and incidents constitute unpermitted discharges and are violations of 27A O.S. §2-6-205(A).

32. The lift station at Fisherman's Point is not fenced, as required by OAC 252:656-11-4(a), and, therefore, is not secure. Evidence at the site indicated the lock on the electric box was broken, the box was damaged and that sewage had been flowing downhill to the lake for some

time. An inspection of the Pine Cove Marina area of the park by Phillis Stevens and Robert Bates, DEQ representatives, on July 22, 1999, indicates that lake water levels sometimes are higher than the lift stations at Fisherman's Point and Hickory Flats, the septic tanks, and the floors of the bathhouses. These incidents and conditions have resulted in unpermitted discharges and are violations of 27A O.S. §2-6-205(A).

33. Unpermitted land application of POTW effluent was documented by Phillis Stevens, Water Quality Division, DEQ, and Robert Bates, R.S., Roland DEQ Office on July 22, 1999, while inspecting the wastewater lagoon system. Effluent from the lagoons was being used to irrigate areas of the park to which the public has access. These areas include camping and picnic areas. Prior to land application of wastewater, a permit pursuant to OAC 252:621 and OAC 252:656, must be obtained. Respondent did not submit an application for and DEQ did not issue a permit to the Respondent for land application of wastewater. Non-industrial wastewater to be applied on multipurpose areas, such as golf courses, must be disinfected prior to application. Land application of non-industrial wastewater to areas where there may be skin contact cannot be permitted under any circumstances. These incidents and conditions constitute unpermitted discharges and are violations of 27A O.S. §2-6-205(A).

34. On August 20, 1999, DEQ sent a warning letter to the Respondent regarding the violations observed on July 22, 1999.

35. Failure of Oklahoma Tourism and Recreation Department to comply with the rules stated in Paragraphs Thirty-one (31) through Thirty-three (33) results in harm to the environment or health and well being of the affected public. By allowing sewage from the holding tank and lift station and land application from the wastewater lagoon to discharge to the groundwater and surface water, Respondent could not verify that Oklahoma's Water Quality Standards are being met. Failure to meet these standards will cause a dissolved oxygen depletion, which will have detrimental effects to fish and other aquatic organisms. Furthermore, such a discharge would contain pathogenic bacteria, which would cause the public, who swim or fish in the stream, to be exposed to an unsafe level of bacteria.

36. On February 4, 2000, the DEQ and the Respondent entered into a Memorandum of Agreement, Case No. 99-420 to address the findings described above. On July 25, 2001 the MOA was amended. The MOA and Amendment are attached hereto and incorporated by

reference. For the purposes of this Order, this MOA constitutes a Notice of Violation as required by 27A O.S. §2-3-502. MOA, Case No. 99-420 and Addendum, Case No. 99-420(A), required the following tasks to be completed according to the schedule indicated:

Task	Date
A. During periods of high water elevation, which result in flooding of the septic tank at the marina, a watertight hose or other watertight connection will be used to pump sewer accumulation to a disposal truck or other non-inundated collection point. In the event that the redirection is not possible, the facilities served by this septic tank will be closed until such time as the water recedes.	As Necessary
B. For non-sealed lifted stations, which are totally inundated and are a threat to discharge effluent into the lake, the facilities served by the lift station will be closed until such time as the water recedes.	As Necessary
C. Retain a professional engineer licensed in the State of Oklahoma who is competent in wastewater design and project oversight.	December 1, 2000
D. Prepare and submit an approvable engineering report documenting the corrective action for the violations cited in Paragraphs Two through 4 of the MOA.	March 1, 2002
E. Submit approvable plans and specifications for construction.	March 1, 2002
F. Obtain funding for the project.	July 1, 2002
G. Bid project and select contractor.	October 1, 2002
H. Start construction.	November 1, 2002
I. Complete construction.	November 1, 2003

37. Tasks C and D of Paragraph Thirty-six (36) have been completed. As of the date of this Order, all other tasks listed in Paragraph Thirty-six (36) remain uncompleted.

38. The Engineering Report of Task D in Paragraph Thirty-six (36) documented that the wastewater treatment system is capable of treating approximately 25% of the wastewater load. Park operations must be limited to restrict the generation of wastewater to the capability of the wastewater treatment system.

39. On February 28, 2001, a meeting between representatives of DEQ and the Respondent was held at DEQ. One of the topics of the meeting was the status of the Tenkiller Lake State Park POTW.

40. Failure by the Respondent to comply with the rules cited above will result in harm to the environment or to the health and well being of the affected public.

CONCLUSIONS OF LAW

41. The DEQ has jurisdiction concerning this matter pursuant to 27A O.S. §1-3-101.

42. The facts stated above constitute violations of 27A O.S. §§2-6-105(A) and (B) and 2-6-201 *et seq.*, for which this Order may be issued.

43. 27A O.S. §2-6-105(A) states “It shall be unlawful for any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, land or waters of the state. Any such action is hereby declared to be a public nuisance.” 27A O.S. §2-6-105(B) states “If the Executive Director finds that any of the air, land or waters of the state have been, or are being, polluted, the Executive Director shall make an order requiring such pollution to cease within a reasonable time, or requiring such manner of treatment or of disposition of the sewage or other polluting material as may in his judgment be necessary to prevent further pollution. It shall be the duty of the person to whom such order is directed to fully comply with the order of the Executive Director.”

44. This Order is issued pursuant to 27A O.S. §2-6-105 and §2-6-206.

ORDER

45. This Order closes and supercedes Memorandum of Agreement, Case No. 01-169; MOA, Case No. 99-423, and Addendum thereto; and MOA, Case No. 99-420, and Addendum thereto.

46. The Respondent shall cease all unpermitted discharges from the POTWs that serve Lake Texoma Resort State Park, Sequoyah State Park, and Tenkiller Lake State Park.

47. The Respondent shall employ or retain under contract properly certified wastewater works operators to be in responsible charge of the POTWs that serve Lake Texoma Resort State Park, Sequoyah State Park, and Tenkiller Lake State Park.

LAKE TEXOMA RESORT STATE PARK

48. The Respondent shall limit wastewater flows generated by all public use operations within the Lake Texoma State Resort Park to the capacity of the wastewater treatment facilities that serve those operations. Any portions of the wastewater treatment systems that are subject to inundation will be presumed to have no capacity for the purpose of this Order.

49. The Respondent shall operate the wastewater land application system properly to prevent the wastewater treatment lagoons from overflowing.

50. The Respondent shall complete the following tasks at the Lake Texoma State Resort Park according to the schedule specified.

TASK	DATE
A. Employ or retain under contract a Class D wastewater works operator to serve in responsible charge of the POTW.	July 1, 2002
B. In consultation with DEQ, prepare a checklist to be completed and signed weekly by the Lake Texoma Resort State Park manager that covers the operational status of and maintenance performed on all units of the POTW including lift stations, main and satellite lagoons, and wastewater land application system. Once the checklist is approved by DEQ, it shall be implemented. Copies of the checklists shall be retained for inspection for a period of at least three (3) years.	July 1, 2002

TASK	DATE
C. Modify the lift station that serves the Catfish Bay area so that wastewater and lake water cannot mix and lake water is precluded from entering the POTW during periods of inundation. If such modifications cannot be made, the lift station must be removed from service and areas of the Lake Texoma Resort State Park served by this lift station must be closed to public occupancy (see footnote 1) or other measures must be implemented immediately to properly manage the wastewater.	October 1, 2002
D. Rally Area. Reduce the wastewater load to the capacity of the POTW from the following operation(s): semi-modern and modern RV camp-sites, comfort station #7, dump station, and temporary rally RV sites. If the wastewater load cannot be reduced to the capacity of the POTW, the designated areas must be closed to public use or other measures must be implemented immediately to properly manage the wastewater.	July 9, 2002
E. Ben's Camp. Reduce the wastewater load to the capacity of the POTW from the following operation(s): semi-modern and modern RV campsites, dump station, and comfort station #8 between the modern and semi-modern campgrounds. If the wastewater load cannot be reduced to the capacity of the POTW, the designated areas must be closed to public use or other measures must be implemented immediately to properly manage the wastewater. Submit documentation that the dikes of the lagoons that serve Ben's Camp area are above 640 ft above mean sea level (MSL). If they are at an elevation of less than 640 ft above MSL, the top of the lagoon dike must be raised to at least 641 ft above MSL. If the lagoon dikes are not at 640 ft MSL or higher, all public use areas served by these lagoons must be closed. The comfort station #9, which serves the swimming beach, may remain open contingent upon the lagoon dikes being higher than 640 ft MSL.	October 1, 2002

¹ The Catfish Bay lift station shall be made watertight to prevent any discharge during inundation and the installation of watertight caps over each of the RV sewer hookup pipes shall be done to preclude lake water from entering the lift station. Such caps are to be kept in place except when an RV site is being used. In addition, the lift station power will be disconnected prior to inundation to prevent lake water from being pumped to the main lagoon. In the event that the existing lift station cannot be made watertight, a new lift station that meets all the requirements of OAC 252:656, which can be sealed watertight, will be installed. In addition, each RV sewer hook-up pipe will be capped as previously required.

TASK	DATE
F. Area West of Rally Area. Reduce the wastewater load to the capacity of the POTW from the following operation(s): dump station and temporary RV rally sites. If the wastewater load cannot be reduced to the capacity of the POTW, the designated areas must be closed to public use or other measures must be implemented immediately to properly manage the wastewater. The comfort station #6 may remain open providing its design capacity is not exceeded.	July 9, 2002
G. Rooster Creek Campground. Reduce the wastewater load to the capacity of the POTW from the following operation(s): semi-modern campsites and comfort station #5. If the wastewater load cannot be reduced to the capacity of the POTW, the designated area must be closed to public use or other measures must be implemented immediately to properly manage the wastewater.	July 9, 2002
H. Chickasaw Point Golf Club House and Maintenance Barn. Install proper fencing with gate and signage around the Chickasaw Point Lagoon. If fencing is not installed, the restrooms and snack bar must be closed.	October 1, 2002
I. Submit to DEQ for approval a Standard Operating Procedure (SOP) that includes operations for the following: the wastewater land application system; closing, disinfecting, and reopening facilities and areas impacted by inundation; and regularly determining the operational status of all pumping stations until they can be brought into compliance with standards in OAC 252:656. The SOP shall incorporate the checklist developed as part of Task B. The SOP may incorporate appropriate portions of the Interim Operations and Maintenance Plan as described in Note 2 of Paragraph Fifty-two (52) of this Order.	October 1, 2002
J. Submit to DEQ an approvable Engineering Report, as specified in OAC 252:656-3-4, that describes actions necessary to eliminate the wastewater treatment system non-compliance with state requirements.	January 1, 2003
K. Submit to DEQ approvable Plans and Specifications and an application for a Construction Permit, as specified in OAC 252:656-3-2 and 252:656-3-5.	March 1, 2003

TASK	DATE
L. Begin construction to upgrade the wastewater treatment system in accordance with approved Plans and Specifications.	December 1, 2003
M. Complete construction to upgrade the lift stations and lagoons in accordance with approved Plans and Specifications.	April 1, 2005
N. Lift stations, which are not in compliance for reasons other than being subject to inundation, overflow or discharge, may remain in operation if the upgrade construction schedule is met.	April 1, 2005

51. The Respondent shall initiate provisions for the periodic monitoring of the Standard Operating Procedures required by Task I of this Order so that compliance with this Order is maintained. In the event that the operating procedures are not implemented as specified, such failure to implement the procedures will be considered a violation of this Order and will subject the Respondent to immediate closure of the State Park property.

52. The following may remain open provided restrictions are met (see footnote 2): the main park area north of Rooster Creek Bridge and south of U.S. 70 including the lodge, cabins, cottages, multi-purpose building, laundries, dump stations, marina boat pump-out station and golf course pro shop, restaurant and maintenance building, park office, Lake Texoma Assoc., and

- 2 In March 2002, the Department of Environmental Quality received an Interim Operations and Maintenance Plan from the Lake Texoma Resort State Park, which addresses some of the violations noted in the Memorandum of Agreement, Case No. 01-169. Specifically, the facility has stated that improvements and repairs have been made to the lagoon system access road and that maintenance of this road will be improved with the use of a new tractor; that trees, weeds, cattails, and other obstructions have been removed on and around the dikes and in the lagoon; that the golf course has purchased a new automatic irrigation control system, a new radio controller has been installed on the lagoon pump station, and a new chemical feed pump has been installed to inject chlorine into the irrigation system; that the golf course personnel are coordinating their irrigation schedule such that excess flows to the lagoon are being ground applied on the golf course in accordance with permit #ST-91-016; and that the land application system is capable of applying and the golf course is capable of receiving 9.63 acre feet of excess flows per year from the lagoons which should prevent overflow from the lagoon.

Based on the aforementioned efforts made by the Oklahoma Tourism and Recreation Department at Lake Texoma State Park, as stated in the Interim Operations and Maintenance Plan, those facilities discharging effluent into the main lagoon systems may continue to do so. This interim plan is contingent upon an extreme and aggressive effort on the part of the Oklahoma Tourism and Recreation Department and Lake Texoma State Park staff to effectively manage and properly utilize and maintain the permitted ground application system. (Permit # ST-91-016). The success of the Oklahoma Tourism and Recreation Department's on-site staff to utilize this system to preclude lagoon overflows and unauthorized discharges will be closely monitored by the Department of Environmental Quality. A checklist will be developed which will be used by facility staff to monitor the operation of the lift stations, main lagoon, satellite lagoons and ground application system. This checklist will be completed on a weekly basis and copies will be forwarded to DEQ on a weekly basis.

cabanas; lake patrol office; Rooster Creek Park and maintenance managers' residences, and residence sewage system.

53. If the construction required in Task L of Paragraph Fifty (50) has not begun by the date specified, lift stations that do not comply with the construction standards in OAC 252:656 must be removed from service. Those areas of the park served by non-compliant lift stations must be closed to public use.

SEQUOYAH STATE PARK

54. The Respondent shall limit wastewater flows generated by all public use operations within the Sequoyah State Park to the capacity of the wastewater treatment facilities that serve those operations. Any portions of the wastewater treatment systems that are subject to inundation will be presumed to have no capacity for the purpose of this Order.

55. The Respondent shall complete the following tasks at the Sequoyah State Park according to the following schedule:

TASK	DATE
O. Reduce the wastewater load to the capacity of the POTW from the following designated Sequoyah State Park operations. If the wastewater load cannot be reduced to the capacity of the POTW, the designated areas must be closed to public use or other measures must be implemented immediately to properly manage the wastewater.	July 1, 2002
1. Creek Area: tent camping and comfort station.	
2. Chickasaw Area: tent camping, dump station and comfort station.	
3. Choctaw Area: RV campsites, tent-campsite dump station, and comfort stations.	

TASK	DATE
4. Seminole Area: RV campsites, comfort stations, and dump station.	
5. Paradise Cove: tent camping and comfort station serving tent camping; marina boat pump-out station and cease sewage discharge from the marina café; the comfort station serving the marina. The marina trailer house residence and lagoon may remain open provided documentation is submitted demonstrating the lagoon dikes are at a sufficient elevation to prevent inundation from the lake.	
6. Cherokee Area: Comfort station, and dump station.	
7. Group Camp Area: Group Camp cabins, bathhouse, community building, and infirmary.	
8. Lodge, Golf Course, and Stable Area: the lodge, swimming pool, family reunion center, cottages and cabanas, bunkhouse, laundry, golf club house and golf course, and coin operated laundry. The five residences may remain open provided documentation is submitted demonstrating the lagoon dikes are at a sufficient elevation to prevent inundation from the lake. If only three of the residences are occupied, the Nature Center and the maintenance area restrooms may be open for public use.	
P. Submit to DEQ for approval a standard Operating Procedure that includes operations for the following: closing, disinfecting, and reopening facilities and areas impacted by inundation; and regularly determining the operational status of all pumping stations until they are brought into compliance with the standards in OAC 252:656.	October 1, 2002
Q. Submit to DEQ for approval a long-term plan to upgrade the wastewater treatment lagoons and bring the pump stations into compliance with the standards in OAC 252:656. This plan should be in the form of an Engineering Report as described by OAC 252:656-3-4.	January 1, 2003
R. Submit to DEQ approvable Plans and Specifications and an application for a Construction Permit, as specified in OAC 252:656-3-2 and OAC 252:656-3-5 for the upgrade of the wastewater treatment system.	March 1, 2003

TASK	DATE
S. Begin construction to upgrade the wastewater treatment system in accordance with the approved Plans and Specifications.	December 1, 2003
T. Complete construction to upgrade the wastewater treatment system in accordance with the approved Plans and Specifications.	December 1, 2005

56. The Respondent shall initiate provisions for the periodic monitoring of the Standard Operating Procedures required by Task P of this Order so that compliance with this Order is maintained. In the event that the operating procedures are not implemented as specified, such failure to implement the procedures will be considered a violation of this Order and will subject the Respondent to immediate closure of the State Park property.

57. If the construction required in Task S of Paragraph Fifty-five (55) has not begun by the date specified, POTW facilities that do not comply with the construction standards in OAC 252:656 must be removed from service and those areas of the park served by non-compliant facilities must be closed to public use.

TENKILLER LAKE STATE PARK

58. The Respondent shall limit wastewater flows generated by all public use operations within the Tenkiller Lake State Park to the capacity of the wastewater treatment facilities that serve those operations. Any portions of the wastewater treatment systems that are subject to inundation will be presumed to have no capacity for the purpose of this Order.

59. The Respondent shall complete the following tasks at the Tenkiller Lake State Park according to the following schedule:

TASK	DATE
U. Reduce the wastewater load to the capacity of the POTW from the Flying Squirrel Area RV campground. If the wastewater load cannot be reduced to the capacity of the POTW, the designated areas must be closed to public use or other measures must be implemented immediately to properly manage the wastewater.	July 1, 2002

TASK	DATE
<p>V. Reduce the wastewater load to the capacity of the POTW from the following operation(s). If the wastewater load cannot be reduced to the capacity of the POTW, the designated areas must be closed to public use or other measures must be implemented immediately to properly manage the wastewater.</p> <ol style="list-style-type: none"> 1. Fox Squirrel Area: RV campground, comfort station, and dump station (see note 3). 2. Swimming Pool. 3. Bluff View Area: tent camping and comfort station. 4. Cedar Ridge Area: tent camping. 	September 4, 2002
<p>W. Fisherman's Point Area. Reduce the wastewater load to the capacity of the POTW from the following operation(s). If the wastewater load cannot be reduced to the capacity of the POTW, the designated areas must be closed to public use or other measures must be implemented immediately to properly manage the wastewater.</p> <ol style="list-style-type: none"> 1. Boat ramp comfort station. 2. Lift station. 3. Upper DX comfort station (unless installation of new lift station #3 is completed by the date specified). 	October 1, 2002
<p>X. Park Office, Nature Center, and Meeting Room. Reduce the wastewater load to the capacity of the POTW from the restrooms. If the wastewater load cannot be reduced to the capacity of the POTW, the designated areas must be closed to public use or other measures must be implemented immediately to properly manage the wastewater</p>	October 1, 2002
<p>Y. Cabins. Close unless installation of new lift station #3 is completed by the deadline. If the wastewater load cannot be reduced to the capacity of the POTW, the designated areas must be closed to public use or other measures must be implemented immediately to properly manage the wastewater.</p>	October 1, 2002

³ The comfort station south of Tenkiller Drive and west of Fox Squirrel and Flying Squirrel RV Campgrounds may continue to be served provided the wastewater load does not exceed the design capacity of the system.

TASK	DATE
Z. Marina. If the wastewater load cannot be reduced to the capacity of the POTW, the designated areas must be closed to public use.	
1. Modify the waste holding tank at the marina to be watertight.	October 1, 2002
2. During periods of high water elevation, which would preclude pumping out the marina holding tank, a watertight hose or other watertight connection shall be used to pump sewage accumulation to a disposal truck or other non-inundated collection point. In the event that redirection is not possible, the boat pumping station and marina facilities served by the holding tank will be closed until the water recedes.	As Necessary
AA. North Park Area.	
1. Shady Grove, Hickory Flats, and Blue Jay Nob Areas. Restrict usage of the areas to reduce the wastewater generation to the annual capability of the existing two-cell lagoon system.	July 1, 2002
2. Shady Grove, Hickory Flats Areas. Close campgrounds and comfort stations during periods of high water.	As Necessary
BB. Submit to DEQ for approval a standard Operating Procedure that includes operations for the following: closing, disinfecting, and reopening facilities and areas impacted by inundation; and regularly determining the operational status of all pumping stations until they are brought into compliance with the standards in OAC 252:656.	October 1, 2002
CC. Submit to DEQ for approval a long-term plan to upgrade the wastewater treatment lagoons and bring the pump stations into compliance with the standards in OAC 252:656. This plan should be in the form of an Engineering Report as described by OAC 252:656-3-4.	January 1, 2003

TASK	DATE
DD. Submit to DEQ approvable Plans and Specifications and an application for a Construction Permit, as specified in OAC 252:656-3-2 and OAC 252:656-3-5 for the upgrade of the wastewater treatment system	March 1, 2003
EE. Begin construction to upgrade the wastewater treatment system in accordance with the approved Plans and Specifications.	December 1, 2003
FF. Complete construction to upgrade the wastewater treatment system in accordance with the approved Plans and Specifications.	December 1, 2004

60. The Respondent shall initiate provisions for the periodic monitoring of the Standard Operating Procedures required by Task BB of this Order so that compliance with the terms of Order is maintained. In the event that the operating procedures are not implemented as specified, such failure to implement the procedures will be considered a violation of this Order and will subject the Respondent to immediate closure of the State Park property.

61. If the construction required in Task EE of Paragraph Fifty-nine (59) has not begun by the date specified, POTW facilities that do not comply with the construction standards in OAC 252:656 must be removed from service and those areas of the park served by non-compliant facilities must be closed to public use.

FOR ALL THREE STATE PARKS

62. All terms and operating procedures included within this Order, are subject to random and unannounced inspection by the DEQ. Any violations found may subject the Respondent to immediate closure of the State Park property.

63. This Order may be modified by the DEQ in the event that the Respondent presents clear and convincing evidence of improvements in the capacity of the wastewater treatment facilities, which are accomplished in accordance with the laws of the State of Oklahoma and with the DEQ Regulations.

64. Respondent shall seek funding for the remediation of all the non-compliant wastewater treatment systems serving facilities that Respondent intends to utilize. If said

funding is not received within one year from the date of this Order, all utilized non-compliant wastewater treatment systems shall be closed until such time as the remedial work is completed.

OPPORTUNITY FOR HEARING AND/OR SETTLEMENT CONFERENCE

65. This Order will become final no later than fifteen (15) days after service unless DEQ receives a written request for a hearing within the above prescribed time period. Such request shall be directed to:

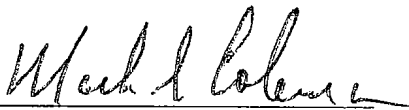
Sandra McClain
Administrative Hearing Clerk
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677

Any request for hearing shall include a response stating the paragraphs in the ACO Respondent admits and the paragraphs Respondent denies.

66. The Respondent may also confer with DEQ regarding settlement. A settlement inquiry will not extend the statutory period in which a request for a hearing must be received by DEQ.

67. Judicial review of a final Order may be obtained by filing a petition in district court within thirty (30) days after the Respondent is notified of the final Order.

So ordered this 24th day of Jan, 2002.


MARK S. COLEMAN
EXECUTIVE DIRECTOR

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1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA

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W. A. DREW EDMONDSON, in his)
5 capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
6 OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
7 in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
8 FOR THE STATE OF OKLAHOMA,)

)
9 Plaintiff,)

)
10 vs.)4:05-CV-00329-TCK-SAJ

)
11 TYSON FOODS, INC., et al,)

)
12 Defendants.)

13 -----

14 THE VIDEOTAPED DEPOSITION OF
15 LOWELL CANEDAY, PhD, produced as a witness on
16 behalf of the Defendants in the above styled and
17 numbered cause, taken on the 5th day of February,
18 2008, in the City of Tulsa, County of Tulsa, State
19 of Oklahoma, before me, Lisa A. Steinmeyer, a
20 Certified Shorthand Reporter, duly certified under
21 and by virtue of the laws of the State of Oklahoma.

22

23

24

25

Exhibit 12

00094

1 State Park is a very small state park. It really is
2 more like a city park. It has very little use by
3 comparison with some of the other state parks in
4 Oklahoma.

5 Q Have you camped in any of the parks we've just 12:00PM
6 identified?

7 A Yes.

8 Q Which ones?

9 A I've camped at actually Natural Falls,
10 Cherokee Landing and Lake Tenkiller. 12:00PM

11 Q And when you camp, how does your family camp;
12 in canvas or do you have a pop-up?

13 A We have a pop-up with a canvas. I've probably
14 camped in tents because we bought that trailer, a
15 little pop-up trailer after I had been here for 12:01PM
16 several years, so I probably also camped in tents.

17 Q Does your trailer have a head on it?

18 A No, no.

19 Q So for toilet facilities, you use whatever the
20 park has available? 12:01PM

21 A We use park facilities.

22 Q Now, at Natural Falls, didn't that used to be
23 called Dripping Springs Park?

24 A Yes. Locally it was called Dripping Springs.

25 There is actually another Dripping Springs State 12:01PM

00095

1 Park. So when they received that land in, oh,

2 goodness, probably about ten years ago, they named

3 it Natural Falls.

4 Q Now, that park has a wastewater handling

5 system? 12:01PM

6 A Yes. I think there they're on a lagoon

7 system, if I recall that area correctly.

8 Q And so people that use the campground, if they

9 have an RV that has a toilet in it, they can

10 connect -- they can connect -- excuse me. Some of 12:02PM

11 the sites actually have sewage connections for RV's;

12 would you agree?

13 A I believe that is correct. In that I don't

14 use that, I'm not going to swear to exactly how

15 many, but I believe that Natural Falls has some 12:02PM

16 sites with sewer. I know they have sites with water

17 and they have a dump station for public use.

18 Q All right. So even if you've got an RV and

19 you didn't have a site you could connect directly,

20 there is a receptacle you could discharge your waste 12:02PM

21 in before you leave the park?

22 A You could, if they are structured so.

23 Q All right, and Cherokee Landing and Tenkiller

24 State Park have similar arrangements for RV'ers?

25 A Yes.

00096

1 Q And, of course, each of the parks has toilet
2 facilities, showers, et cetera?

3 A Yes.

4 Q To your knowledge is that wastewater handled
5 through the same system? 12:03PM

6 A Natural Falls is small enough that I believe
7 that is all done through one system. Cherokee
8 Landing I believe actually has two systems, and
9 Tenkiller may have as many as four or five systems.

10 Q Okay. How is it that you're so familiar with 12:03PM
11 their waste handling system? I understand you're a
12 recreational specialist, so I'm not surprised
13 that --

14 A We are currently doing -- I've had a contract
15 now for three years with the Oklahoma Tourism & 12:03PM
16 Recreation Department, which has a state parks
17 division. They have had all of their records in CAD
18 drawings. We are converting their CAD drawings to
19 GIS drawings, GIS being a much more preferred system
20 for location. So in going through all of those 12:04PM
21 drawings, you become familiar with where the lines
22 are and where water goes and so on.

23 Q You would agree that these park waste
24 management systems also have the potential to
25 release constituents into the environment? 12:04PM

00097

1 A Absolutely, and, in fact, that has occurred.

2 Q In particular, tell me what you're referring

3 to.

4 A Tenkiller State Park is one of five parks that

5 DEQ identified as having inadequate control of their 12:04PM

6 waste, and it was -- a portion of it was closed

7 down. The state parks division shut down the

8 restrooms in part of Lake Texoma (sic) State Park.

9 Q Tenkiller? You said -- you keep wanting to

10 say Texoma. 12:05PM

11 A I'm sorry. Texoma was also included in

12 Tenkiller, and installed portable potties. I think

13 that has occurred over at least two, maybe three

14 summers. It was under the administration of Jane

15 Jayroe when she was the executive director. I have 12:05PM

16 disputed that as a management practice, but that is

17 the way they've done it.

18 Q Tell me the nature of your dispute.

19 A I do not believe replacing overloaded restroom

20 facilities and septic systems with porta-potties 12:05PM

21 solves the problems. It would be better to -- I

22 suppose you have two options. One would be correct

23 the problem, build a bigger capacity unit, or reduce

24 the number of people using the area, and what was

25 happening, the parks have been -- the parks have 12:06PM

00098

1 been permitted to exceed their carrying capacity

2 and, therefore, present more users than the waste

3 treatment systems can handle. State parks chose not

4 to do that. I have not noticed that at all at

5 Natural Falls, which would be the only park in this 12:06PM

6 area. Natural Falls has one of the newer systems.

7 Q Is the capacity at Natural Falls sufficient to

8 handle peak usage?

9 A We are going to find that out. I actually

10 right now have a contract with state parks to do the 12:06PM

11 resource management plan on Natural Falls, and we'll

12 find out.

13 Q Aren't they in fact having to pump down to the

14 tank or the system at Natural Falls?

15 A It wouldn't surprise me. That's very common. 12:07PM

16 I have heard the number quoted that state parks

17 needs 100 million dollars just to solve their septic

18 tank problems.

19 Q And some of that money needs to be spent at

20 the three parks we have talked about? 12:07PM

21 A I've heard at least for Tenkiller. Cherokee

22 Landing I've not heard that, but it wouldn't

23 surprise me.

24 MR. McDANIEL: Okay. Let's go ahead and

25 take our lunch break. 12:07PM

Oklahoma
Office of the Attorney General
W.A. Drew Edmondson

News Release

06/13/2005

W.A. Drew Edmondson, Attorney General

AG Sues Poultry Industry for Polluting Oklahoma Waters

Citing the protection of Oklahoma lakes and streams, drinking water and public health, Attorney General Drew Edmondson today announced his office has filed a lawsuit against several out-of-state poultry companies for polluting the waters of the state.

The complaint alleges violations of the federal Comprehensive Environmental Response Compensation and Liability Act, state and federal nuisance laws, trespass and Oklahoma Environmental Quality and Agriculture Codes.

"It all comes down to pollution," Edmondson said. "Too much poultry waste is being dumped on the ground and it ends up in the water. That's against the law. The companies own the birds as well as the feed, medicines and other things they put in their birds. They should be responsible for managing the hundreds of thousands of tons of waste that comes out of their birds."

Edmondson said that the filing of the lawsuit does not mean he has given up on mediation or negotiation.

"The filing of the petition was necessary whether the end result came from an agreement or a trial. You must have a petition to have a court order.

"We will defer issuance of summons," Edmondson added, "for a brief period to see if continued talks have any promise for settlement."

Named in the complaint are Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Aviagen, Inc., Cal-Maine Foods, Inc., Cal-Maine Farms, Inc., Cargill, Inc., Cargill Turkey Production, LLC, George's, Inc., George's Farms, Inc., Peterson Farms, Inc., Simmons Foods, Inc., and Willow Brook Foods, Inc. These companies include some of the country's largest providers of chicken, turkey and eggs to consumers in the United States.

The lawsuit was filed in the United States District Court for the Northern District of Oklahoma on behalf of the State of Oklahoma, including the attorney general and Oklahoma Secretary of the Environment Miles Tolbert. The suit addresses pollution in the Illinois River watershed, which consists of more than one million acres of land in Arkansas and Oklahoma. The watershed includes the Illinois River, Baron Fork River, Caney Creek, Flint Creek, Lake Tenkiller and other minor tributaries.

The Oklahoma legislature has designated about 70 miles of the Illinois River, about 35 miles of the Baron Fork River and about 12 miles of Flint Creek as scenic river areas, and Lake Tenkiller is one of Oklahoma's most popular outdoor recreation areas.

"We are asking the court to force these companies to stop polluting and repair the damage they have already done," Edmondson said. "Clean water is our most important natural resource, not only for public water supply and recreation, but also for the future of agriculture, industry and tourism."

The lawsuit alleges runoff from the improper dumping and storage of poultry waste has caused and is causing the pollution of Oklahoma streams and lakes. In this watershed alone, the phosphorus from poultry waste is equivalent to the waste that would be generated by 10.7 million people, a population greater than the states of Arkansas, Kansas and

Oklahoma combined.

"I understand that many hardworking Oklahomans are employed by this industry and that a viable industry is important to their future," Edmondson said. "I also understand that the poultry companies can conduct their business in compliance with the law and remain viable - if they choose to do so.

"One company alone, Tyson, announced it was spending \$75 million over 12 months in an ad campaign. If they can afford that, they can afford to clean up their waste," Edmondson said.

The attorney general said the Illinois River watershed serves as the source of drinking water for 22 public water supplies in eastern Oklahoma.

"We're not only talking about phosphorus," Edmondson said. "This waste contains arsenic, zinc, hormones and microbial pathogens like e. coli and fecal coliform - not exactly things you want in your drinking water."

Edmondson, who has spent the last three years seeking a negotiated water quality agreement with the poultry companies, said his attempts to reach an agreement outside the courtroom have not yet been successful.

"It's been three years, but we still don't have an agreement," Edmondson said. "We still hope for a negotiated agreement, but while we sit and hope, the pollution is still occurring. Filing this suit puts us one step closer to finally resolving this issue."

The attorney general has never claimed that poultry waste is the only source of pollution, just the major one, and poultry waste is not the only pollutant on which Edmondson has focused. The attorney general assisted the secretary of environment and Oklahoma environmental agencies in finalizing an agreement with Arkansas in December of 2003 to address municipal waste discharges.

"I know there are other sources of pollution," Edmondson said. "But, the major source of pollution in the watershed is poultry litter. No matter how much the industry pays its public relations consultants to spin it, the truth is obvious. Chicken waste is the problem."

The attorney general said the state cannot allow its waterways to be used as a dump.

"The financial burden for disposing of the poultry industry's waste should not fall on the citizens of Oklahoma, nor should Oklahoma allow its scenic rivers and lakes to serve as the poultry industry's disposal facility," Edmondson said. "Until the poultry companies are forced to take responsibility for safe management of their waste, these practices will continue and the problems will remain."



Complaint.pdf

| 313 NE 21st Street,
Oklahoma City, OK 73105 |
405.521.3921 |
918.581.2885 |



[Complaint_4_Exhibits.pdf](#)

00001

1 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

2
STATE OF OKLAHOMA, ex rel.
3 W. A. DREW EDMONDSON, in his
capacity as ATTORNEY GENERAL
4 OF THE STATE OF OKLAHOMA and
OKLAHOMA SECRETARY OF THE
5 ENVIRONMENT C. MILES TOLBERT,
in his capacity as the TURSTEE
6 FOR NATURAL RESOURCES FOR
THE STATE OF OKLAHOMA,

7
Plaintiffs,

8
vs. 05-CV-0329 GKF-SAJ

9
TYSON FOODS, INC., TYSON
10 POULTRY, INC., TYSON CHICKEN,
INC., COBB-VANTRESS, INC.,
11 AVIAGEN, INC., CAL-MAINE FOODS,
INC., CAL-MAINE FARMS, INC.,
12 CARGILL, INC., CARGILL TURKEY
PRODUCTION, LLC, GEORGE'S, INC.,
13 GEORGE'S FARMS, INC., PETERSON
FARMS, INC., SIMMONS FOODS, INC.,
14 and WILLOW BROOK FOODS, INC.,

15 Defendants.

16 VIDEO DEPOSITION OF SHANON PHILLIPS
TAKEN ON BEHALF OF THE DEFENDANTS
17 JANUARY 17, 2008, BEGINNING AT 9:00 A.M.
IN OKLAHOMA CITY, OKLAHOMA

18

19

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21

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23

24

25 REPORTED BY: Laura L. Robertson, CSR, RPR

Exhibit 14

00044

1 the Illinois River Watershed are on the 303-D water
2 list as not meeting the beneficial use of primary body
3 contact; correct?

4 A. Could you rephrase that? Not all -- let me
5 rephrase that to make sure that I understood your
6 question.

7 Q. Sure.

8 A. Not all of the waters that are listed on the
9 303-D list are listed for primary body contact?

10 Q. That's not my question, but go ahead and
11 answer that question.

12 A. No.

13 Q. Okay. So not all of the waters in the
14 Illinois River Watershed, okay, are on the 303-D list
15 for not meeting the beneficial use of primary body
16 contact; correct?

17 A. That's correct.

18 Q. Which means that some of the waters in the
19 Illinois River Watershed, some segments meet the
20 beneficial use of primary body contact; correct?

21 A. Yes.

22 Q. Okay. Let me have you turn to page 11 of
23 the Comprehensive Basin Management Plan report. This
24 is Bates labeled 2190. And here you have listed in
25 two columns, you have problems and you have causes, do

00045

1 you see that?

2 A. Yes.

3 Q. Okay. And under problems, you have listed

4 recreation, poultry and agricultural waste, open

5 sewers, loss of apiarian areas and on and on, down to

6 urban runoff. And under causes, there is a few that I

7 want to ask you some questions about.

8 One of those is dumping of raw/treated

9 sewage. Do you see that?

10 A. Yes.

11 Q. Would you agree that the dumping of raw or

12 treated sewage would contribute bacteria to waters in

13 the Illinois River Watershed?

14 A. The dumping of raw sewage would contribute

15 to bacteria problems in the Illinois River Watershed.

16 Q. Okay. Treated sewage would not?

17 A. Treated sewage is generally chlorinated,

18 which would effectively kill the bacteria.

19 Q. Does it kill 100 percent of the bacteria?

20 A. There are some concerned about whether or

21 not it does that.

22 Q. Okay. And who has those concerns?

23 A. I'm not sure exactly who. I can just say

24 that I have heard those concerns raised before.

25 Q. And we do have treated sewage discharges

00046

1 into the Illinois River Watershed; is that correct?

2 A. Yes.

3 Q. Okay. And raw sewage, that can be from
4 humans; correct?

5 A. Uh-huh.

6 Q. Wildlife; correct?

7 A. Yes.

8 Q. Pets; correct?

9 A. Uh-huh.

10 Q. Cattle; correct?

11 A. Uh-huh.

12 Q. Any other sources? Let me finish.

13 MR. LENNINGTON: She's saying uh-huh.

14 MR. SANDERS: I would like her to say yes
15 also.

16 MR. LENNINGTON: I just want to make sure we
17 have a clear record here.

18 Q. (BY MR. JANTZEN) That's a good point, so we
19 will kind of get going fast here, I just want to make
20 sure you answer yes and no, because the camera will
21 understand, but what she's taking down, we just wanted
22 to make sure it is clear.

23 A. Yes.

24 Q. So in terms of raw sewage, you would agree
25 that raw sewage contributes bacteria to the waters of

00047

1 the Illinois River Watershed; correct?

2 A. Yes.

3 Q. And you would agree that humans are a source
4 of raw sewage; correct?

5 A. Yes.

6 Q. And pets are a source of raw sewage?

7 A. Yes.

8 Q. And wildlife is a source of raw sewage?

9 A. Yes.

10 Q. And cattle is a source of raw sewage?

11 A. Yes.

12 Q. And I'm not intending to make a
13 comprehensive list, we can probably sit here all day
14 and come up with examples, but those are some good
15 primary examples; right?

16 A. You know, though, can you define "sewage"
17 for me?

18 Q. I would say anything from a worm -- just
19 excrement, right, you know, urine, feces, how is that
20 for a definition?

21 A. I do think, though, that typically, and
22 probably in this report when we were referring to raw
23 sewage, we were talking about sewage from waste water
24 treatment plants.

25 Q. Are there circumstances where waste water

00048

1 treatment plants discharge raw sewage?

2 A. Yes.

3 Q. Okay. And circumstances would be like an
4 upset in the system?

5 A. Yes.

6 Q. Overflows, too much water, things like that;
7 correct?

8 A. Uh-huh.

9 Q. So there are circumstances, and they are
10 probably not that unusual, that we do have discharges
11 of raw sewage in the Illinois River Watershed from
12 waste water treatment plants; correct?

13 A. I can't speak about their frequency.

14 Q. Fair enough. But it occurs; correct?

15 A. Yes.

16 Q. Okay. Waste dumping, do you see that listed
17 under causes?

18 A. Yes.

19 Q. You would agree that under certain
20 circumstances waste dumping would contribute bacteria
21 to waters of the Illinois River Watershed; correct?

22 A. Yes.

23 Q. What about solid waste, can solid waste
24 contribute bacteria to waters of the Illinois River
25 Watershed?

00049

1 A. Yes.

2 Q. For example, open dumping?

3 A. Yes.

4 Q. Can you think of any other examples?

5 A. I think that at some point in time there is

6 the discussion about whether or not some of the waste

7 water treatment plant solid waste would be land

8 applied in the watershed.

9 Q. Okay. Let's talk about that. What do you

10 mean by solid waste from waste water treatment plants?

11 A. One of the outputs of a waste water

12 treatment plant is an amount of solid waste.

13 Q. Okay. It is the -- the more solid

14 constituent of the process; correct?

15 A. Uh-huh.

16 Q. And sometimes that's land applied; correct?

17 A. Yes.

18 Q. Okay. And that can be ostensibly a source

19 of bacteria to waters of the Illinois River Watershed

20 when it is land applied within the watershed; correct?

21 A. I don't know, I'm not well versed in the

22 state requirements for solid waste application. That

23 would be better answered by someone at DEQ.

24 I believe that the purpose of this document

25 was to layout all the potential universe of sources

00050

1 that might need to be questioned. And so there is a
2 possibility that solid waste application could
3 contribute.

4 Q. Okay. Under tourism, recreation, do you see
5 that listed under causes?

6 A. Yes.

7 Q. What do you mean by tourism, recreation as a
8 cause for water quality issues in the Illinois River
9 Watershed?

10 A. There is a substantial tourism industry in
11 the watershed that brings additional users into the
12 community.

13 Q. And how do those users contribute to water
14 quality issues in the Illinois River Watershed?

15 A. They contribute extra wastes through the
16 sewage systems and through the nature about rural
17 watershed, a lot of those -- a lot of facilities are
18 serviced by septic systems as opposed to a centralized
19 waste water treatment plant.

20 So they contribute extra waste to a septic
21 system.

22 Q. Is it also the case that recreational users
23 of either the Illinois or Hiker State Parks, just
24 people over there using the land and the water for
25 recreation contribute perhaps raw sewage, untreated

00051

1 human sewage to the watershed?

2 A. Yes.

3 Q. There is not always porta-potty facilities

4 where you need them; correct?

5 A. That has been a concern in the past.

6 Q. Yes. When is the last time -- how many

7 times do you think you have been to the Illinois River

8 Watershed?

9 A. I couldn't even guess how many times I have
10 been there.

11 Q. A lot?

12 A. Define a lot.

13 Q. I don't know. Ten, 20?

14 A. More than 20.

15 Q. More than you can count. What were the
16 purposes of your visits?

17 A. Well, as I stated before, that's where my
18 thesis research was conducted, and so we sampled the
19 lake twice a month for two years.

20 Q. Okay.

21 A. I have also gone there for recreational
22 purposes.

23 Q. And what kind of recreating did you do in
24 the watershed?

25 A. I have floated the river and played in the

00057

1 studies?

2 A. The conclusion of those studies was that

3 there was a potential. Those studies -- the studies

4 that I have seen did not have any way, though, of

5 definitively saying whether or not the bacteria in the

6 river was linked to septic systems.

7 Q. Do you know why they didn't have any way of

8 definitively linking septic tanks to bacteria issues

9 in the Illinois River Watershed?

10 A. They -- the types of studies that they were

11 doing did not allow them to make that leap. They

12 didn't have a marker, per se, to tie in to a specific

13 source.

14 Q. Okay. What about beef cattle, free range

15 cattle, would those be a source of bacteria to waters

16 of the Illinois River Watershed?

17 A. They could be.

18 Q. They could be. Sometimes they deposit feces

19 and urine directly into the waters of the Illinois

20 River and its tributaries; correct?

21 A. Yes.

22 Q. In your various recreational outings have

23 you ever seen cattle in the river of the Illinois

24 River Watershed?

25 A. Yes.

00058

1 Q. Is that a pretty normal occurrence?

2 MR. LENNINGTON: Objection, form.

3 Q. (BY MR. JANTZEN) During your visits? It is
4 not unusual to see cattle in the water?

5 A. It is not unusual.

6 Q. Okay. What about dairies, can dairies be a
7 contributor or a source of bacteria issues in waters
8 of the Illinois River Watershed?

9 A. They can.

10 Q. What about swine, swine facilities, would
11 you agree that swine facilities are a source of
12 bacteria?

13 A. The potential exists for them to be a
14 contributor.

15 Q. Okay. So what we have established is there
16 is numerous, numerous sources of bacteria that could
17 be contributing to bacteria issues in the Illinois
18 River Watershed; correct?

19 A. Yes.

20 Q. Okay. If the judge in this case were to
21 issue an injunction that prohibits the land
22 application of poultry litter, would you agree with me
23 that other -- that that's not going to completely
24 solve or solve at all the bacteria issues -- let me
25 finish, the bacteria issues that are in the waters of

00059

1 the Illinois River Watershed?

2 MR. LENNINGTON: Objection, form.

3 THE WITNESS: No, I don't -- I don't believe
4 that I would agree with you on the grounds that there
5 have been many steps taken already to address sources
6 of pollution from those other sources that you just
7 stated.

8 There are programs in place to -- in fact,
9 there is regulation in place to reduce the impacts of
10 swine. There are programs in place to improve the
11 access of people to improve septic systems. There are
12 programs in place to -- we just began a 20.6 million
13 dollar program to fence cattle out of the stream.
14 So we are taking steps to address those other sources.

15 Q. (BY MR. JANTZEN) So you said there is
16 programs, and you specifically called out swine, that
17 there is regulatory programs that govern how swine
18 waste, perhaps, is dealt with in the watershed;
19 correct?

20 A. Uh-huh.

21 Q. And you cited that as an example as a
22 measure that's been taken to deal with that source;
23 correct?

24 A. Yes.

25 Q. You would acknowledge, would you not, that

00060

1 the State of Oklahoma has a regulatory program in
2 place for the land application of poultry litter,
3 would you not?

4 A. Yes.

5 Q. Okay. You're not saying, are you -- and
6 let's step back to my previous question. You have
7 acknowledged that there are multiple sources of
8 bacteria in waters in the Illinois River Watershed,
9 and you're not saying by taking -- by ostensibly
10 taking care of one of those sources you solve the
11 entire bacteria issue, are you?

12 A. I'm saying that there are multiple potential
13 sources of bacteria in the Illinois River Watershed.

14 Q. Right.

15 A. And unless you have information to show that
16 one of those sources is the predominant sources, or
17 one or more of those sources are the predominant
18 sources by addressing one of them, no, you wouldn't --
19 you would not be completely addressing the bacteria
20 problem.

21 Q. Are there any sources of bacteria in the
22 Illinois River Watershed that have not been addressed
23 through regulation or through the program to fence out
24 beef cattle, any of those sources we discussed that
25 have not been addressed in some form or fashion?

00061

1 A. I think that there are -- there is room for
2 improvement in dealing with all sources. As we
3 continue to develop new technology, we find better
4 ways of dealing with the wastes that we have to deal
5 with in the watershed.

6 Q. Would reducing the number of humans using
7 the Illinois River Watershed for recreational purposes
8 every year, would that reduce bacteria present in the
9 waters of the Illinois River Watershed?

10 A. It might.

11 Q. Is stream bank erosion a water quality issue
12 in the Illinois River Watershed?

13 A. Yes.

14 Q. How so?

15 A. Stream bank erosion contributes sediment.
16 And by "sediment" I mean soil particles and gravel
17 which affect water quality habitat that's available
18 for biological life in the stream.

19 They are also nutrient enriched generally
20 above other soils in the watershed and some of the
21 research that we have done has shown that they can
22 contribute significantly to nutrients in the stream.

23 Q. In the same vein, can stream bank erosion be
24 a contributor of bacteria to water quality, or to the
25 waters of the Illinois River Watershed?

00065

1 was meeting or not meeting its beneficial uses.

2 Q. When were those samples taken?

3 A. Those samples would have been taken between
4 1999 and 2002, approximately.

5 Q. Okay. Do you recall what the results of
6 those samples, the analyses on those samples was?

7 A. No, honestly, I don't. I didn't do that
8 analysis.

9 Q. As you sit here today, can you identify any
10 poultry litter land application site or area that is
11 in fact contributing bacteria to the waters of the
12 Illinois River Watershed?

13 MR. LENNINGTON: Objection, form.

14 THE WITNESS: I can't identify any specific
15 site.

16 Q. (BY MR. JANTZEN) The watershed based plan
17 that we discussed earlier in your deposition, does it
18 contain any recommendations as to how to proceed to
19 address water quality issues in the Illinois River
20 Watershed?

21 A. Ultimately it will. At this point, as I
22 said, I believe only the first chapter has been
23 drafted, which kind of provides a summary of some of
24 the historical studies.

25 Q. So as it sits, this is based on your